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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

Sunac China Holdings Limited,<sup>1</sup>

Debtor in Foreign Proceeding.

Chapter 15

Case No. 23-11505 (  )

**MOTION FOR (I) RECOGNITION OF FOREIGN MAIN  
PROCEEDING, (II) RECOGNITION OF THE FOREIGN REPRESENTATIVE,  
AND (III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

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<sup>1</sup> The Debtor is incorporated in the Cayman Islands as an exempted company with limited liability and registered with registration number 186588. The Debtor's principal place of business in Hong Kong is Room 1517, Level 15, West Exchange Tower, 322 Des Voeux Road Central, Sheung Wan, Hong Kong.

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David L. Lawton and Shannon B. Wolf, <i>The Thing About Schemes in the Scheme of Things: Recognition of Schemes of Arrangement under Chapter 15 of the U.S. Bankruptcy Code</i> , at 1 (INSOL International Technical Series Issue No. 38, March 2018).....	29
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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mr. Gao Xi, in his capacity as the authorized foreign representative (the “Foreign Representative” or “Petitioner”) for the above-captioned debtor (the “Debtor”) that is subject to a restructuring proceeding entitled *In the Matter of Sunac China Holdings Limited* (the “Hong Kong Proceeding”), concerning a scheme of arrangement (the “Scheme”) between the Debtor and Scheme Creditors (as defined herein) pursuant to sections 670, 673, and 674 of the Companies Ordinance (Cap. 622 of the Laws of Hong Kong) (the “Companies Ordinance”) and currently pending before the Court of First Instance of the High Court of the Hong Kong Special Administrative Region of the People’s Republic of China (the “Hong Kong Court”), case number HCMP382/2023, by and through his undersigned counsel, respectfully submits this motion (this “Motion”) and represents as follows:

**RELIEF REQUESTED**

1. Pursuant to this Motion, the Foreign Representative respectfully requests, pursuant to sections 105(a), 1504, 1507, 1509, 1510, 1515, 1517, 1520, 1521 and 1522 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), entry of an order substantially in the form annexed hereto as Exhibit A (the “Proposed Recognition Order”):

- (i) finding that the Debtor is eligible to be a “debtor” under chapter 15 of the Bankruptcy Code;
- (ii) recognizing the Hong Kong Proceeding under section 1517 of the Bankruptcy Code as a “foreign main proceeding” (as defined in section 1502(4) of the Bankruptcy Code) and granting all relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code, or, in the alternative, recognizing the Hong Kong Proceeding under section 1517 of the Bankruptcy Code as a “foreign nonmain proceeding” (as defined in section 1502(5) of the Bankruptcy Code) and granting all relief included therewith;
- (iii) recognizing the Petitioner as a duly appointed “foreign representative,” as defined in section 101(24) of the Bankruptcy Code in respect of the Hong Kong Proceeding;

- (iv) granting full force and effect and comity to the Scheme and the Hong Kong Orders (each as defined herein), including the releases and discharge(s) contained therein and the additional relief set forth herein pursuant to section 1521(a) and/or 1507(a) of the Bankruptcy Code, including granting the Foreign Representative the right to administer the Debtor's assets;
- (v) permanently enjoining parties from commencing or continuing any action or proceeding that is inconsistent with the Scheme in the United States;
- (vi) entrusting Petitioner with the administration of any and all of the Debtor's assets within the territorial jurisdiction of the United States;
- (vii) authorizing the Existing Notes Trustee, Existing Notes Agents, Existing Agents, and New Trustees (each as defined herein) to take any and all actions necessary to give effect to the terms of the proposed restructuring of the Existing Debt (as defined herein) pursuant to the Scheme (the "Restructuring") and discharge(s); and
- (viii) granting such other and further relief as this Court deems just and proper.

The relief requested in this Motion is without prejudice to any additional relief the Foreign Representative may request.

2. In support of this Motion, the Foreign Representative submits the *Declaration of Gao Xi in Support of the Motion for (I) Recognition of Foreign Main Proceeding, (II) Recognition of the Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the "Foreign Representative Declaration"); the *Declaration of Ang Chee Khian Desmond as Hong Kong Counsel to the Debtor in Support of the Motion for (I) Recognition of Foreign Main Proceeding, (II) Recognition of the Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the "Counsel Declaration" and together with the Foreign Representative Declaration, the "Declarations"); and the *Statements of the Foreign Representative Required by Section 1515(c) of the Bankruptcy Code and Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure* (the "Corporate Statements" and, collectively with the Declarations,

the “Supporting Documents”), which have been filed contemporaneously herewith and are incorporated herein by reference.<sup>2</sup>

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11, 12 Misc. 00032* (S.D.N.Y. Feb. 2, 2012) (Preska, C.J.). Recognition of a foreign proceeding and other matters under Chapter 15 of the Bankruptcy Code have been designated core matters under 28 U.S.C. § 157(b)(2)(P).

4. The Foreign Representative has properly commenced this chapter 15 case (the “Chapter 15 Case”) pursuant to sections 1504 and 1509 of the Bankruptcy Code by filing a petition for recognition of the Hong Kong Proceeding under section 1515 of the Bankruptcy Code (the “Chapter 15 Petition”).

5. Venue is proper under 28 U.S.C. § 1410 as the Debtor has assets within the United States located in New York, as described further herein.

### **BACKGROUND**

#### **I. Business Operations and Capital Structure**

6. The Debtor has been incorporated in the Cayman Islands under the Cayman Islands Companies Act as an exempted company with limited liability since April 27, 2007. The Debtor maintains a principal place of business in Hong Kong located at Room 1517, Level 15, West Exchange Tower, 322 Des Voeux Road Central, Sheung Wan, Hong Kong, which the Debtor

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to such terms in the Supporting Documents, the Scheme, or the explanatory statement for the Scheme (as amended, modified, or supplemented from time to time, the “Explanatory Statement”), as applicable. A copy of the Explanatory Statement, as made available to Scheme Creditors on August 28, 2023 (following the Convening Hearing (as defined below)) and supplemented on September 4, 2023, is attached as Exhibit C to the Counsel Declaration.

publicly disclosed in various filings with The Stock Exchange of Hong Kong Limited (“HKEX”).

The Debtor also has been registered with the Hong Kong Companies Registry (the “Hong Kong Registrar”) since 2009, as required for all companies that have an established place of business in Hong Kong.

7. The Debtor is the ultimate holding company of a group of companies comprising the Debtor and its subsidiaries, including the Subsidiary Guarantors<sup>3</sup> (collectively, the “Group”), which is principally engaged in the property development and property investment business in the People’s Republic of China.

8. The Group is a property developer with nationwide leading capabilities in comprehensive urban development and integrated industrial operations and is committed to providing optimized living environments and services for Chinese families through high quality products and services, and integration of high quality resources. The Group also develops entertainment venues such as theme parks, hotels, and ski resorts.

#### **A. Operation Segments and Business Operations**

9. The Group’s operations are comprised of three key business segments:

- (i) *Property Development:* The Group primarily focuses on the development of integrated residential and commercial properties. The Group develops a variety of residential properties for sale, including high-rise apartments, mid-rise apartments, townhouses and detached villas, as well as various commercial properties for sale and for lease, including retail stores, offices and services apartments. The Group’s residential projects are typically large-scale, featuring a combination of residential properties integrated with value-added ancillary facilities such as clubhouses, retail stores, parking spaces and schools. Similarly, the Group’s commercial properties are typically large-scale commercial complexes combining retail space, offices, parking facilities and, in some cases, serviced apartments. As of December 31, 2022, the Group and its joint

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<sup>3</sup> “Subsidiary Guarantors” shall mean the following subsidiaries of the Debtor: (i) Sunac Real Estate Investment Holdings Ltd.; (ii) Qiwei Real Estate Investment Holdings Ltd.; (iii) Ying Zi Real Estate Investment Holdings Ltd; (iv) Jujin Real Estate Investment Holdings Ltd; (v) Jujin Property Investment Holdings Limited; (vi) Ding Sheng Real Estate Investment Holdings Ltd; (vii) Ding Sheng Property Investment Holdings Limited; (viii) Zuo Yue Real Estate Investment Holdings Limited and (ix) Zuo Yue Property Investments Holdings Limited.

ventures and associates had 890 property development projects across five urban circles in China.

- (ii) *Property Management:* Group entity Sunac Services Holdings Limited and its subsidiaries are principally engaged in the provision of property management services, value-added services to non-property owners and community value-added services, and commercial operational services.
- (iii) *Cultural and Tourism Projects:* The Group is a leading cultural and tourism industry operator in China. This segment focuses on developing and operating theme parks, hotels, and other entertainment venues. As of December 31, 2022, the Group also had 12 operating ski resorts (seven indoor and five outdoor ski resorts) under the management of the ice and snow segment. The Group has developed a world-leading one-stop operation and service provider covering ski sports, education, and entertainment in the new spending environment.

10. The Group's revenue for the financial year ended December 31, 2022 amounted to RMB 96.75 billion (US\$13.33 billion)<sup>4</sup> as compared with RMB 198.39 billion (US\$27.33 billion) for the financial year ended December 31, 2021, and RMB 230.59 billion (US\$31.77 billion) for the financial year ended December 31, 2020.

## **B. Existing Capital Structure and Existing Debts**

11. As of December 31, 2022, the Group had total liabilities of approximately RMB 1.003 trillion (US\$138.19 billion). Of this amount, the Debtor had total liabilities of approximately RMB 82.85 billion (US\$11.41 billion), including borrowings totaling approximately RMB 65.65 billion (US\$9.04 billion), as further outlined below.

12. The total principal amount outstanding under the Existing Debt (as defined below) as of the date hereof is approximately US\$9 billion, comprised of:

- (i) the New York law-governed 6.00% senior notes due July 6, 2022 issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors (the "Private 2022 Notes"), with an aggregate principal amount outstanding of US\$225 million;

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<sup>4</sup> All conversions of currency from Renminbi (RMB) to US Dollar (US\$) set forth herein are expressed as an approximation and are made at the rate of RMB 7.2582 to US\$1.00, being the rate published by the People's Bank of China Monetary Policy Department for August 31, 2023.

- (ii) the New York law-governed 7.25% senior notes due June 14, 2022 (the “June 2022 Notes”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$600 million;
- (iii) the New York law-governed 7.95% senior notes due August 8, 2022 (the “August 2022 Notes”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$600 million;
- (iv) the New York law-governed 8.35% senior notes due April 19, 2023 (the “April 2023 Notes”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$643 million;
- (v) the New York law-governed 6.50% senior notes due July 9, 2023 (the “July 2023 Notes”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$600 million;
- (vi) the New York law-governed 7.95% senior notes due October 11, 2023 (the “October 2023 Notes”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$741.6 million;
- (vii) the New York law-governed 7.50% senior notes due February 1, 2024 (the “February 2024 Notes”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$616.4 million;
- (viii) the New York law-governed 5.95% senior notes due April 26, 2024 (the “April 2024 Notes”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$942 million;
- (ix) the New York law-governed 6.65% senior notes due August 3, 2024 (the “August 2024 Notes”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$620 million;
- (x) the New York law-governed 6.80% senior notes due October 20, 2024 (the “October 2024 Notes”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$400 million;
- (xi) the New York law-governed 6.50% senior notes due January 10, 2025 (the “January 2025 Notes”) issued by the Debtor and guaranteed by the Subsidiary

Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$740.9 million;

(xii) the New York law-governed 7.00% senior notes due July 9, 2025 (the “July 2025 Notes”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$600 million;

(xiii) the New York law-governed 6.50% senior notes due January 26, 2026 (the “January 2026 Notes”, together with the Private 2022 Notes, the June 2022 Notes, the August 2022 Notes, the April 2023 Notes, the July 2023 Notes, the October 2023 Notes, the February 2024 Notes, the April 2024 Notes, the August 2024 Notes, the October 2024 Notes, the January 2025 Notes and the July 2025 Notes, the “Existing Notes”; DB Trustees (Hong Kong) Limited, in its capacity as trustee under the Existing Notes indentures, the “Existing Notes Trustee”; Deutsche Bank AG, Hong Kong Branch, in its capacity as common depositary for the Clearing Systems and payee of the Existing Notes, the “Existing Common Depository”; Deutsche Bank AG, Hong Kong Branch, in its capacity as principal paying agent and as registrar and transfer agent under the Existing Notes indentures, the “Existing Notes Paying and Transfer Agent and Registrar”; DB Trustees (Hong Kong) Limited, in its capacity as collateral agent under the Existing Debt, the “Existing Collateral Agent” and together with the Existing Common Depository, and Existing Notes Paying and Transfer Agent and Registrar the “Existing Notes Agents”) issued by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with an aggregate principal amount outstanding of US\$600 million;

(xiv) the debts owing under the Hong Kong law-governed facility agreement dated July 7, 2020 (as supplemented, amended and restated from time to time) (the “Private Debt A”) borrowed by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with Yasmin Asset Holding Ltd. as agent and an aggregate principal amount outstanding of US\$300 million;

(xv) the debts owing under the Hong Kong law-governed facilities agreement dated August 20, 2019 (as supplemented, amended and restated from time to time) (the “Private Debt B”) borrowed by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with China Construction Bank (Asia) Corporation Limited as agent and an aggregate principal amount outstanding of US\$170.5 million;

(xvi) the debts owing under the Hong Kong law-governed facilities agreement dated June 25, 2021 (as supplemented, amended and restated from time to time) (the “Private Debt C”) borrowed by the Debtor and guaranteed by the Subsidiary Guarantors and secured by the shares in the Subsidiary Guarantors, with The Hongkong and Shanghai Banking Corporation Limited as agent and an aggregate principal amount outstanding of US\$205 million (consisting of facility A

with a principal amount of US\$175 million and facility B with a principal amount of HK \$235.5 million);

- (xvii) the debts owing under the English law-governed ISDA Master 2002 Agreement dated January 20, 2016 entered into by Morgan Stanley & Co. International PLC and the Debtor (as supplemented, amended and restated from time to time) (the “Private Debt D”), with an aggregate principal amount outstanding of approximately US\$28.03 million;
- (xviii) the debts owing under the English law-governed ISDA Master 2002 Agreement dated January 21, 2016 entered into by The Hongkong and Shanghai Banking Corporation Limited and the Debtor (as supplemented, amended and restated from time to time) (the “Private Debt E”), with an aggregate principal amount outstanding of US\$768,647;
- (xix) the debts owing under the Hong Kong law-governed facility agreement dated June 9, 2020 (as supplemented, amended and restated from time to time) (the “Private Debt F”) borrowed by the Debtor, with China Construction Bank (Asia) Corporation Limited as agent and an aggregate principal amount outstanding of US\$80 million;
- (xx) the debts owing under the Hong Kong law-governed facility agreement dated June 29, 2020 (as supplemented, amended and restated from time to time) (the “Private Debt G”) borrowed by the Debtor, with China Construction Bank (Asia) Corporation Limited as agent and security agent and an aggregate principal amount outstanding of US\$70 million;
- (xxi) the debts owing under the Hong Kong law-governed facility agreement dated June 4, 2021 (as supplemented, amended and restated from time to time) (the “Private Debt H”) borrowed by the Debtor, with China Construction Bank (Asia) Corporation Limited as agent and security agent and an aggregate principal amount outstanding of US\$110 million; and
- (xxii) the debts owing under the Hong Kong law-governed facility agreement dated June 4, 2021 (as supplemented, amended and restated from time to time) (the “Private Debt I” and, together with the Private Debt A, the Private Debt B, the Private Debt C, the Private Debt D, the Private Debt E, the Private Debt F, the Private Debt G and the Private Debt H, the “Existing Private Debt”; the Existing Notes together with the Existing Private Debt, the “Existing Debt”) borrowed by the Debtor, with China Construction Bank (Asia) Corporation Limited as agent (together with The Hongkong and Shanghai Banking Corporation Limited and Yasmin Asset Holding Ltd., each in its capacity as agent and/or security agent under the applicable Existing Private Debt, the “Existing Agents”) and an aggregate principal amount outstanding of US\$155 million.

13. Based on the Group's audited financial statements for the financial year ended December 31, 2022, the total assets of the Group on a consolidated basis as of December 31, 2022, amounted to approximately RMB 1.09 trillion (US\$150.17 billion), of which current assets amounted to approximately RMB 839.21 billion (US\$115.62 billion). The total assets of the Debtor as of December 31, 2022 totaled approximately RMB 86.19 billion (US\$11.87 billion), of which current assets totaled approximately RMB 60.47 billion (US\$8.33 billion).

14. The Debtor's main assets as of December 31, 2022 were comprised of amounts due from its subsidiaries (approximately RMB 60.40 billion (US\$8.32 billion)) and its investments in its direct and indirect subsidiaries, including the Subsidiary Guarantors (RMB 25.72 billion (US\$3.54 billion)). The Debtor also maintains some cash in Hong Kong bank accounts and has property in the United States in the form of a retainer with the Debtor's U.S. counsel, Sidley Austin LLP, which funds are held in a client trust account in New York, New York.

15. The majority of the Group's current assets cannot be collected or converted into cash immediately. As of December 31, 2022, the Group's current assets are as follows:

- (i) Properties under development of approximately RMB 587.12 billion;
- (ii) Completed properties held for sale of approximately RMB 53.92 billion;
- (iii) Inventories of approximately RMB 0.99 billion;
- (iv) Trade and other receivables of approximately RMB 59.44 billion;
- (v) Contract costs of approximately RMB 6.30 billion;
- (vi) Amounts due from related companies of approximately RMB 63.42 billion;
- (vii) Prepayments of approximately RMB 15.88 billion;
- (viii) Prepaid income tax of approximately RMB 13.49 billion;
- (ix) Financial assets at fair value through profit or loss of approximately RMB 1.11 billion;
- (x) Restricted cash of approximately RMB 25.94 billion; and

(xi) Cash and cash equivalents of RMB 11.60 billion.

16. As of December 31, 2022, the Group's total liabilities on a consolidated basis amounted to approximately RMB 1,003.76 billion. Major liabilities items include:

- (i) Trade and other payables of approximately RMB 256.97 billion;
- (ii) Contract liabilities of approximately RMB 318.85 billion;
- (iii) Amounts due to related companies of approximately RMB 42.88 billion;
- (iv) Current tax liabilities of approximately RMB 61.79 billion;
- (v) Current borrowings of approximately RMB 253.48 billion; and
- (vi) Long term borrowings of approximately RMB 44.94 billion.

17. The Group also has certain financing arrangements onshore, including borrowings from Chinese financial institutions and other debt instruments. Primarily, Sunac Real Estate Group Co., Ltd., one of the key onshore operating subsidiaries and onshore financing platforms of the Group, issued five public corporate bonds (the "Corporate Onshore Bonds") and five private domestic corporate bonds (the "Private Onshore Bonds"). As of December 31, 2022, the principal and extended interest amount was RMB 10.93 billion in respect of the Corporate Onshore Bonds and RMB 4.19 billion in respect of the Private Onshore Bonds. These bonds are not being subject to the Scheme, and the Group has reached agreements with the onshore bondholders in respect of various extensions for the repayment timeline for the Corporate Onshore Bonds and Private Onshore Bonds.

18. The Group further has a number of offshore private debts that have either been successfully amended and extended or such creditors are supportive of negotiating an amendment and have indicated to the Group that they do not intend to take any material legal and/or security enforcement action against the relevant borrower(s) and obligor(s).

19. As of the date hereof, the authorized share capital of the Debtor is HK\$1,500,000,000 divided into 15,000,000,000 ordinary shares of a nominal or par value of HK\$0.10 each, and the Debtor has issued 5,448,883,911 ordinary shares of a nominal or par value of HK\$0.10 each, of which all shares are fully paid up.

### **C. The Debtor's Presence in Hong Kong**

20. The Debtor, as a holding company, conducts its operations exclusively outside of mainland China, including its significant business activities within Hong Kong where, as noted above, the Debtor has been registered with the Hong Kong Registrar since 2009 and maintains a principal place of business in Hong Kong.<sup>5</sup> Copies of the Debtor's certificate of incorporation, articles of association, and annual returns are on file with the Hong Kong Registrar. The Debtor's shares have been listed on the main board of HKEX since October 7, 2010. The Debtor's financial statements are prepared and audited in accordance with the Hong Kong Financial Reporting Standards, and filed publicly with HKEX. Furthermore, because the Debtor's shares are listed on HKEX, the Debtor must submit to the jurisdiction of the Hong Kong Securities and Futures Commission.

21. The Debtor's presence and activities in Hong Kong are known to its creditors through a variety of channels. Certain of the documents and instruments documenting or constituting the Existing Debt (the "Existing Finance Documents") clearly identify the Debtor's presence and activities in Hong Kong. For example, although the Existing Notes are governed by New York law, certain Existing Notes indentures refer to the Debtor listing its shares on HKEX, using Hong Kong generally accepted accounting principles, and maintaining an office or agency

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<sup>5</sup> As described above, certain of the Debtor's subsidiaries operate in mainland China; however, the Debtor itself does not have any offices in mainland China.

where notices or demands may be served on the Debtor in New York *or* Hong Kong. Additionally, other than the Private Debt D and Private Debt E, which are governed by English law, the Existing Private Debt is governed by Hong Kong law. Certain advisors to the creditors when the Existing Debt was originally entered into were based in Hong Kong. The principal advisors of the Debtor and some of the advisors of the ad hoc group of holders of the Existing Debt as constituted from time to time (the “Ad Hoc Group”) who are advised by Linklaters LLP and involved in the Restructuring are similarly based in Hong Kong. Additionally, as described in more detail below, in 2022, certain beneficial holders of Existing Notes, lenders of the Existing Private Debt, and other creditors of the Debtor presented or filed notices of intention to appear in support of a petition to the Hong Kong Court to wind-up the Debtor, which petition was later withdrawn. The Subsidiary Guarantors Jujin Property Investment Holdings Limited, Ding Sheng Property Investment Holdings Limited, and Zhuo Yue Property Investment Holdings Limited (the “HK Subsidiary Guarantors”) are incorporated in Hong Kong and are indirectly owned by the Debtor.

22. The Debtor has multiple directors who currently reside in Hong Kong, including Mr. Poon Chiu Kwok who has played an active role in monitoring and coordinating the Debtor’s affairs leading up to and during the Hong Kong Proceeding. Additionally, the Debtor’s Foreign Representative, the Debtor’s Chief Financial Officer and Company Secretary, is based in Hong Kong with a Hong Kong residence. As a member of senior management, he has been leading the Restructuring negotiations and holding meetings with Scheme Creditors (as defined below) and advisors in Hong Kong, and made the Scheme affirmation required under Hong Kong law in Hong Kong. The Debtor’s board of directors (the “Board”) authorized the retention of the Debtor’s advisors, including its Hong Kong legal counsel, in May 2022 and was involved in the negotiation

of the various documents involved in the Restructuring and the Scheme. For example, the Board approved the terms of the Restructuring, including the RSA (as defined below), which is governed by Hong Kong law. Furthermore, the Board has exercised certain powers necessary for the implementation of the Restructuring, including the oversight of the Debtor's development of the Scheme.

## **II. Events Preceding Commencement of the Hong Kong Proceeding**

23. Since the fourth quarter of 2021, Chinese property developers and the capital markets that have funded the growth and development of the sector experienced an inflection point. Reduced bank lending for real estate development resulted in reduced access by property developers to Chinese capital. In addition, reduced bank lending for buyers seeking mortgage financing, as well as buyers' concerns about the ability of property developers to complete projects, resulted in reduced property sales. Adverse reaction to these events in China by international capital markets limited the Group's funding sources to address upcoming maturities.

24. Since the beginning of 2022, the Chinese property sector has continued to experience volatility. Reduced bank lending for real estate development, coupled with the adverse impact of COVID-19 pandemic on macroeconomic conditions and certain negative credit events, have intensified market concerns over the operations of property developers in China. As a result, property developers in China have encountered greater difficulty pre-selling their inventory. The Group has also experienced a noticeable decline in its aggregate contracted sales in recent months as a result of: (i) slower progress towards completion of construction projects, (ii) a decrease in housing demands, and (iii) lower selling prices of properties. Against the backdrop of these adverse market conditions, the Group experienced liquidity pressures due to limited access to external capital to refinance its existing indebtedness and reduced cash generated from contracted sales.

25. As a result, certain debts of the Group have become overdue and remain to be settled. In particular, all of the Existing Debt is in default, either as a result of a failure to pay principal at maturity, a failure to pay interest when due, or by the triggering of cross-default clauses. Apart from certain undertakings agreed to by the Scheme Creditors in the RSA, no forbearance agreement is in place in respect of the outstanding Existing Debt.

26. In addition, on September 8, 2022, a beneficial holder of certain Existing Notes purportedly holding a principal amount of US\$22 million plus accrued but unpaid interest presented a petition to the Hong Kong Court to wind-up the Debtor (the “Petition”). On September 22, 2022, the Debtor filed an application to strike out and dismiss the Petition. An amended Petition was filed on October 5, 2022 (the “Re-Amended Petition”). Other creditors including another holder of Existing Notes and certain lenders of the Existing Private Debt (the “Supporting Creditors”) filed notices of intention to appear in support of the Re-Amended Petition. On April 24, 2023, the Supporting Creditors wrote to the Hong Kong Court indicating, among other things, that they no longer intended to appear as Supporting Creditors in the petition proceedings. On June 13, 2023, the Hong Kong Court ordered that the Re-Amended Petition be withdrawn. There are no other pending winding-up proceedings against the Debtor.

27. In light of the tightening liquidity and operational pressures the Group has been facing, the Debtor appointed Sidley Austin as its legal advisors, Houlihan Lokey (China) Limited as financial advisor in relation to the Group’s offshore debts, and China International Capital Corporation Limited as financial advisor in relation to the Group’s onshore open market debts. The Group has been working with its legal and financial advisors to formulate practicable overall restructuring plans for the offshore debts and restructuring plans for the onshore open market debts respectively. Furthermore, the Group has been actively seeking support from financial institutions

to agree to extensions for its project level loans, including seeking holistic resolutions where certain project loans are subject to additional constraints. In addition, the Debtor has been maintaining active communication with its creditors and has endeavoured to reach an agreement with all relevant creditors on the onshore and offshore debt restructuring plans in a timely manner. With the support of all relevant parties, the Group successfully completed the onshore open market bond restructuring at the end of 2022.

28. The Group has been actively engaging with its customers, suppliers, creditors, and shareholders in stabilizing its credit lines and day-to-day operations. It implemented further measures to reduce capital expenditure and other expenses such as management remuneration. As the Group disclosed in September 2022, the Group commenced discussions with the Ad Hoc Group to explore a consensual resolution for the existing defaults of certain Existing Debt.

29. Following extensive negotiations with the Ad Hoc Group, the Debtor and its advisors determined the restructuring and implementation of the Scheme was in the best interests of the Group and its creditors with a legal or beneficial interest as principal in the Existing Debt as of the Record Time (as defined in the Scheme) (collectively, the “Scheme Creditors”). Accordingly, the Debtor entered into that certain restructuring support agreement, dated as of March 28, 2023, and amended on June 14, 2023, (the “RSA”) with certain holders of the Existing Debt.<sup>6</sup> The RSA sets out the terms on which the parties thereto would assist and facilitate the implementation of the Restructuring via the Scheme in Hong Kong and this Chapter 15 Case.

30. Under the terms of the RSA, the Debtor has undertaken to pay, or procure the payment of, on or prior to the Restructuring Effective Date (as defined in the Scheme), the Consent

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<sup>6</sup> The summary of the RSA provided herein is qualified in its entirety by reference to the RSA itself. In the case of any conflict between the summary provided herein and the RSA, the RSA will prevail in all respects.

Fee (as defined in the Scheme), which only represents approximately 0.1% of the aggregate outstanding principal amount of the Existing Debt whose holders acceded to the RSA, in cash to the Scheme Creditors who are parties to the RSA on the terms and conditions set forth in the RSA. For the avoidance of doubt, the existence and terms of the RSA have been made available to all Scheme Creditors and the Consent Fee has been offered to all Scheme Creditors on an equal basis, provided that they are not Blocked Scheme Creditors<sup>7</sup> and that they became a party to the RSA by the relevant deadlines. For Blocked Scheme Creditors that have become a party to the RSA by the Consent Fee Deadline (as defined in the RSA), the Debtor will cause the applicable Consent Fee to be paid to the Successor Escrow Agent to be held in accordance with the terms of the Successor Escrow (each as defined in the Scheme).

31. Additionally, pursuant to the Scheme, the Debtor has agreed to pay the AHG Work Fee and AHG Advisor Fees (each as defined and further detailed in the Scheme) to compensate the Ad Hoc Group and their advisors for the work, time, and risks associated with negotiating the Restructuring and assisting to formulate the Scheme and the terms of the Restructuring. The total amount of the AHG Work Fee and AHG Advisor Fees are anticipated to represent less than 0.272% of the aggregate outstanding principal amount of the Existing Notes.

32. As of August 28, 2023, certain Scheme Creditors holding not less than an approximate aggregate principal amount of US\$7 billion of the Existing Debt (representing over 85% of the aggregate outstanding principal amount of all Existing Debt) had acceded to the RSA. Pursuant to the terms of the RSA, Scheme Creditors that were not already party to

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<sup>7</sup> “Blocked Scheme Creditor” shall mean a Scheme Creditor (other than a Sanctioned Scheme Creditor (as defined in the Scheme), unless that Sanctioned Scheme Creditor has the benefit of a relevant license) that is not entitled, able, or permitted (whether directly or through a custodian) to submit instructions or settle through the Euroclear Bank SA/NV or Clearstream Banking S.A. (the “Clearing Systems”) as a result of Applicable Sanctions (as defined in the Scheme) affecting the Scheme Creditor or its custodian as determined by the Clearing Systems.

the RSA as of the Consent Fee Deadline may no longer accede to it in order to receive the Consent Fee.

### **III. Description of the Scheme and Issuance of New Notes<sup>8</sup>**

33. As described in further detail in the Declarations, a Hong Kong scheme of arrangement is a court-supervised arrangement between a company and its members or its creditors (or classes thereof) pursuant to Part 13, Division 2 of the Companies Ordinance. A scheme of arrangement enables a company to enter into an arrangement or compromise in respect of its debts or obligations with its creditors, or one or more classes of its creditors. Schemes of arrangement are particularly useful in circumstances in which holdout creditors seek an advantage as against similarly ranked creditors in workout negotiations because they enable companies and their creditors in certain instances to obtain court approval to effect restructuring measures without obtaining approval from 100% of the affected creditors. For the Hong Kong Court to sanction a scheme, the scheme must be approved by a majority in number, representing at least 75% in value, of the creditors voting in person or by proxy at each class meeting convened to approve the scheme of arrangement.

34. Under the Scheme, the Group seeks to restructure its liabilities under the Existing Debt. The Scheme will, among other things and subject to its terms, release the claims of the Scheme Creditors against the Debtor and the Subsidiary Guarantors arising out of, relating to or in respect to the Existing Debt. In return, each Scheme Creditor will be entitled to receive the distribution of its pro rata share of the following consideration in accordance with and subject to the terms of the Scheme (the “Restructuring Consideration”):

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<sup>8</sup> The summaries of the Scheme and the New Notes provided herein are qualified in their entirety by reference to the Scheme and the New Notes Indentures themselves. In the case of any conflict between the summaries provided herein and the Scheme or the New Notes Indentures, the Scheme or the New Notes Indentures, as applicable, will prevail in all respects.

- (i) Bonds in an aggregate principal amount of US\$1 billion convertible into ordinary shares of the Debtor listed on HKEX (the “Convertible Bonds”), with GLAS Trustees Limited (“GLAS Trustees” and, together with any successor trustee thereunder, the “CB Trustee”) serving as the trustee under the Convertible Bonds trust deed;
- (ii) If elected by the Scheme Creditor, bonds mandatorily convertible into ordinary shares of the Debtor listed on HKEX (the “Mandatory Convertible Bonds”), with GLAS Trustees (together with any successor trustee thereunder, the “MCB Trustee”) serving as the trustee under the Mandatory Convertible Bonds trust deed with aggregate principal amount of Mandatory Convertible Bonds subject to a cap of US\$1.75 billion, provided that the Debtor shall increase such cap to an amount not greater than US\$2.2 billion on and subject to the terms and conditions of the AHG’s Non-Binding Commitment Letter (as defined in the Explanatory Statement) and may, otherwise, in its sole discretion increase the relevant cap in the event that the aggregate amount of Mandatory Convertible Bonds selected by Scheme Creditors exceeds such cap;
- (iii) If elected by the Scheme Creditor, existing ordinary shares of Sunac Services Holdings Limited (the “Sunac Services Shares”) listed on HKEX, subject to a cap of approximately 449 million shares representing approximately 14.7% of the total issued Sunac Services Shares as of the date hereof, and issued at a price per share equal to the greater of (i) 2.5 times the volume-weighted average price of such shares for the 60 trading days preceding the Record Time and (ii) HK\$13.50; and
- (iv) Up to eight tranches of the New Notes (as defined and outlined below), in an aggregate principal amount equal to the sum of the Scheme Creditors’ Claims minus (i) the aggregate principal amount of Convertible Bonds, (ii) the aggregate principal amount of Mandatory Convertible Bonds, and (iii) the amount of Existing Debt to be exchanged for existing Sunac Services Shares.

35. Specifically, the Debtor will be issuing the following new notes (collectively, the “New Notes”) on the Restructuring Effective Date:<sup>9</sup>

- (i) Senior secured notes bearing interest at 5.0% due 2025 with an original principal amount of US\$500 million to be issued by the Debtor, guaranteed by the Subsidiary Guarantors, with GLAS Trust Company LLC (“GLAS Trust”) serving as the note trustee (together with any successor trustee under the New Notes Indentures, the “New Notes Trustee” and, together with the CB Trustee and the MCB Trustee, the “New Trustees”);

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<sup>9</sup> The summary of the New Notes provided herein is qualified in its entirety by reference to the indentures in respect of the New Notes (the “New Notes Indentures”). In the case of any conflict between the summary provided herein and the New Notes Indentures, the New Notes Indentures will prevail in all respects.

- (ii) Senior secured notes bearing interest at 5.25% due 2026 with an original principal amount of US\$500 million to be issued by the Debtor, guaranteed by the Subsidiary Guarantors, with GLAS Trust serving as the New Notes Trustee;
- (iii) Senior secured notes bearing interest at 5.5% due 2027 with an original principal amount of US\$1 billion to be issued by the Debtor, guaranteed by the Subsidiary Guarantors, with GLAS Trust serving as the New Notes Trustee;
- (iv) Senior secured notes bearing interest at 5.75% due 2028 with an original principal amount of US\$1.5 billion to be issued by the Debtor, guaranteed by the Subsidiary Guarantors, with GLAS Trust serving as the New Notes Trustee;
- (v) Senior secured notes bearing interest at 6.0% due 2029 with an original principal amount of US\$1.5 billion to be issued by the Debtor, guaranteed by the Subsidiary Guarantors, with GLAS Trust serving as the New Notes Trustee;
- (vi) Senior secured notes bearing interest at 6.25% due 2030 with an original principal amount of US\$1 billion to be issued by the Debtor, guaranteed by the Subsidiary Guarantors, with GLAS Trust serving as the New Notes Trustee;
- (vii) Senior secured notes bearing interest at 6.5% due 2031 with an original principal amount equal to the lesser of (i) US\$1 billion and (ii) any remaining Restructuring Consideration to be issued after accounting for the Convertible Bonds, the Mandatory Convertible Bonds, the exchange for existing Sunac Services Shares, and New Notes tranches (i) through (vi), to be issued by the Debtor, guaranteed by the Subsidiary Guarantors, with GLAS Trust serving as the New Notes Trustee; and
- (viii) Senior secured notes bearing interest at 6.5% due 2032 with an original principal amount equal to any remaining Restructuring Consideration to be issued after accounting for the Convertible Bonds, the Mandatory Convertible Bonds, the exchange for existing Sunac Services Shares, and New Notes tranches (i) through (vii), to be issued by the Debtor, guaranteed by the Subsidiary Guarantors, with GLAS Trust serving as the New Notes Trustee.

36. On the Restructuring Effective Date, subsequent to the completion of, among other things, the distribution of the Restructuring Consideration and the issuance of the New Notes and any other Restructuring Consideration instruments, all outstanding Existing Debt will be cancelled and all guarantees in connection with the Existing Debt will be released, including the Subsidiary Guarantors' guarantee of the Debtor's obligations under the Existing Debt, in accordance with the Scheme.

37. The Scheme further provides for certain additional releases, including the release by Scheme Creditors against, among others, the Debtor, its affiliates, including the Subsidiary Guarantors, the Existing Notes Trustee, the Existing Notes Agents, the Foreign Representative, the members of the Ad Hoc Group, and each of their respective personnel and advisors (each, a “Released Person”). Subject to the terms and conditions of the Scheme, these released claims include, but are not limited to, any past, present, and/or future claim arising out of, relating to or in respect of: (i) the Existing Finance Documents; (ii) the preparation, negotiation, sanction or implementation of the Scheme, the Restructuring Documents (as defined in the Scheme), and/or the RSA; and/or (iii) the execution of the Restructuring Documents and the carrying out of the steps and transactions contemplated in the Scheme in accordance with their terms.

38. If the Scheme is approved by the requisite majorities of creditors and sanctioned by the Hong Kong Court and a sealed copy of the Sanction Order (as defined below) is filed with the Hong Kong Registrar, the Scheme will bind all Scheme Creditors, including those creditors who voted in favor of the Scheme, those creditors who voted against it, and those creditors who did not vote at all.

#### **IV. Commencement of the Hong Kong Proceeding**

39. Given the Group’s recent financial difficulties, the Board approved resolutions on March 12, 2023, June 13, 2023, and July 18, 2023, copies of which is attached to the Foreign Representative Declaration as Exhibit A (the “Board Resolutions”), permitting the Debtor to propose the Scheme to initiate the Restructuring and authorizing the Debtor to take actions that are necessary and appropriate in order to carry out the Restructuring, including appointing the

Petitioner as the Foreign Representative and commencing the Chapter 15 Case.<sup>10</sup> On March 9, 2023, the Debtor filed an *ex parte* originating summons, a true and correct copy of which is attached to the Counsel Declaration as Exhibit A, seeking, among other things, an order directing the Debtor to convene a meeting for a single class of creditors whose rights will be affected by the Scheme (namely, the Scheme Creditors) (the “Scheme Meeting”) and requesting a convening hearing (the “Convening Hearing”). The Convening Hearing took place on July 26, 2023. No Scheme Creditor objected to the Scheme at the Convening Hearing.

40. Following the Convening Hearing on July 26, 2023, and on the same day, the Hong Kong Court entered an order (the “Convening Order”) (i) scheduling the Scheme Meeting for September 18, 2023 at 11:00 a.m. (prevailing Hong Kong Time) and (ii) fixing the hearing to sanction the Scheme for October 5, 2023 (the “Sanction Hearing”), among other things. The Convening Order is attached to the Counsel Declaration as Exhibit B.

41. In accordance with the Convening Order, on August 28, 2023, a notice of the Scheme Meeting substantially in the form appended to the Convening Order and set forth in Appendix 10 to the Explanatory Statement, with a link to the Scheme Website (as defined below) to enable access to electronic copies of the Scheme, the Solicitation Packet, and the Explanatory Statement were provided to the Scheme Creditors by Morrow Sodali Limited, in its capacity as the Debtor’s notification and information agent for the Scheme (“Morrow Sodali”) and to Blocked Scheme Creditors by GLAS Specialist Services Limited (“GLAS”), as applicable. Such documents were provided: (i) on the following website maintained by Morrow Sodali: <https://projects.morrowsodali.com/sunac>: (the “Scheme Website”); (ii) via notice provided

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<sup>10</sup> Capitalized terms used in this section, but not defined, are given their meaning under the Foreign Representative Declaration or Counsel Declaration, as applicable.

through the Clearing Systems, as applicable; and (iii) by causing Morrow Sodali to send the notice via electronic mail to each Scheme Creditor for whom Morrow Sodali has contact information or by causing GLAS to send the notice via electronic mail to each Blocked Scheme Creditor, as applicable. Additionally, announcements were made on the HKEXnews website at <http://www.hkexnews.hk.hk> (the “HKEXnews Website”) and on the Group’s website at <http://www.sunac.com.cn> (the “Group Website”).

42. Pursuant to the Convening Order, the Hong Kong Court authorized and appointed Mr. Wan Hiu Yeung (also known as Jacky Wan), or failing him, Mr. Jong Yat Kit (also known as Victor Jong), both of PricewaterhouseCoopers Limited, to act as the Chairperson of the Scheme Meeting.

43. The provisions of the Convening Order ensured that the Scheme Creditors were properly notified of the Scheme Meeting. As noted, pursuant to the terms of the Convening Order, in advance of the Scheme Meeting, the Debtor, through Morrow Sodali, provided access to the Explanatory Statement and other documents related to the Scheme enumerated in the Convening Order to the Scheme Creditors through the Scheme Website. Notice and access to such documents were also provided via electronic mail to each Scheme Creditor for whom Morrow Sodali and/or the Debtor have contact information, via electronic mail to each Blocked Scheme Creditor for whom GLAS has contact information, and/or through the applicable Clearing Systems, as applicable. The Debtor also provided notice via announcements on the HKEXnews Website and Group Website. All Scheme Creditors, other than certain Sanctioned Scheme Creditors (as defined in the Scheme), had the opportunity to attend, be heard, ask questions regarding the proposed Scheme, and vote, in person, by authorized representative (if a corporate entity), or by proxy, at the Scheme Meeting.

44. The Scheme Meeting was duly held on September 18, 2023. At the Scheme Meeting, a vote was held to determine whether the Scheme Creditors that were present and voting in person or by proxy approved the Scheme by a greater than fifty percent (50%) majority in number representing at least seventy-five percent (75%) in value of the Scheme Creditors present and voting.<sup>11</sup> The Scheme Creditors present and voting approved the Scheme by the requisite majorities described in the foregoing sentence, with 2,014 of 2,019 (99.75%) in number representing US\$9,753,677,916 (98.30%) in value voting in favor of the Scheme.

45. As set forth in the Convening Order, the Sanction Hearing is currently listed to be held on October 5, 2023.

46. In advance of the Sanction Hearing on October 5, 2023, the Debtor notified all Scheme Creditors via an announcement on HKEXnews Website that: (i) the Scheme Creditors have approved the Scheme by the requisite majorities; and (ii) the Sanction Hearing is listed to be held on October 5, 2023. Such notice was also provided to Scheme Creditors through the Scheme Website, in addition to providing notice through the applicable Clearing Systems, the Group Website, and via electronic mail to each Scheme Creditor for whom Morrow Sodali has contact information or via electronic mail to each Blocked Scheme Creditor for whom GLAS has contact information, as applicable. A copy of the Debtor's announcement regarding the results of the Scheme Meeting and date of the Sanction Hearing is attached to the Counsel Declaration as Exhibit D.

47. Assuming that the Hong Kong Court deems it appropriate to enter an order sanctioning the Scheme following the Sanction Hearing (the "Sanction Order" and together with

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<sup>11</sup> If the Scheme Creditors did not approve the Scheme by the requisite majorities, the Scheme would not be eligible to be sanctioned by the Hong Kong Court and would not take effect.

the Convening Order, the “Hong Kong Orders”), the Scheme will become effective on its terms once a sealed copy of the Sanction Order has been filed with the Hong Kong Registrar and in accordance with the provisions of the Scheme itself. Each of the Scheme Creditors will be bound by the Scheme, whether or not a particular Scheme Creditor participated in the Scheme Meeting or voted in favor of the Scheme. Accordingly, the Debtor will cause the Scheme to be filed with the Hong Kong Registrar after obtaining the Sanction Order from the Hong Kong Court, upon which filing the Scheme will become effective. Accordingly, the expected timeline for the Hong Kong Proceeding and this Chapter 15 Case is summarized below.

Key Events	Date
Convening Hearing	July 26, 2023
Convening Order	July 26, 2023
Scheme Meeting	September 18, 2023
Chapter 15 Petition Date	September 19, 2023
Sanction Hearing	October 5, 2023
Anticipated date of the Sanction Order	October 5, 2023
Proposed Chapter 15 Recognition Hearing	October 25, 2023
Anticipated Restructuring Effective Date	As soon as all conditions precedent to the Restructuring Effective Date are met, but in no event later than the Longstop Date (December 31, 2023)

#### **BASIS FOR RELIEF REQUESTED**

48. The Foreign Representative and the Debtor seek to fully implement the terms of the Scheme to effectuate the Restructuring. To that end, the Scheme and the Hong Kong Orders must be binding and enforceable in the United States, and the Scheme Creditors must be precluded

from taking any actions in the United States that may frustrate the Restructuring effectuated by the Hong Kong Proceeding. Chapter 15 of the Bankruptcy Code is designed to, *inter alia*, protect and maximize the value of a foreign debtor's assets and to facilitate the rehabilitation of financially distressed businesses. *See* 11 U.S.C. § 1501.

49. Consistent with these principles, the Foreign Representative commenced this Chapter 15 Case to obtain recognition of the Hong Kong Proceeding and to give full recognition and enforcement to the Hong Kong Orders and the Scheme. The Foreign Representative maintains that this Chapter 15 Case will enable the Debtor to achieve the objectives of the Scheme by (i) ensuring that the parties in interest to the Restructuring, including the Debtor, Scheme Creditors, Existing Notes Trustee, Existing Notes Agents, Existing Agents, and New Trustees are treated in the United States consistent with the intentions of the Scheme; (ii) ensuring that the Restructuring is binding, valid, and enforceable in the United States; and (iii) minimizing the risk of litigation over any potential residual claims that might exist under the Existing Debt, the Existing Finance Documents, or ancillary documents related to the Existing Debt.

50. Section 1517 of the Bankruptcy Code provides clear and objective standards that must be satisfied for recognition. Unless doing so would be manifestly contrary to United States public policy, an order recognizing a foreign proceeding must be entered if: (i) the proceeding for which recognition is sought is a foreign proceeding; (ii) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding; (iii) recognition is sought by a foreign representative; and (iv) the Chapter 15 Petition meets the procedural requirements of section 1515 of the Bankruptcy Code. For the reasons set forth below and in the Supporting Documents, the relief sought herein is appropriate under Chapter 15 of the Bankruptcy Code.

## **I. The Debtor Is Eligible for Chapter 15 Relief.**

51. To be eligible for Chapter 15 relief, the Debtor must meet the general eligibility requirements under section 109(a) of the Bankruptcy Code as well as the more specific eligibility requirements under section 1517(a) of the Bankruptcy Code. In addition, the petition for recognition must meet the requirements of section 1515 of the Bankruptcy Code and rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). As demonstrated below, the Debtor and the Chapter 15 Petition meet all such requirements.

### **A. The Debtor Meets the General Eligibility Requirements of Section 109(a) of the Bankruptcy Code**

52. Section 103(a) of the Bankruptcy Code provides that chapter 1, which includes section 109(a), “appl[ies] in a case under Chapter 15.” 11 U.S.C. § 103(a). Thus, the Debtor must meet the eligibility requirements of section 109(a) of the Bankruptcy Code to obtain relief under Chapter 15. Section 109(a) of the Bankruptcy Code provides that “[n]otwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.” 11 U.S.C. § 109(a). Accordingly, under section 109(a), a foreign debtor must reside or have a domicile, a place of business or property in the United States to be eligible to file a Chapter 15 petition. *See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238 (2d Cir. 2013).

53. Section 109(a) of the Bankruptcy Code does not require a specific quantum of property in the United States, nor does it indicate when or for how long such property must have a U.S. situs. *See, e.g., In re Berau Cap. Res. Pte Ltd.*, 540 B.R. 80, 82 (Bankr. S.D.N.Y. 2015). Courts in this Circuit have accordingly held that bank accounts or attorney retainers deposited in New York satisfy the “property in the United States” eligibility requirement of section 109(a) of

the Bankruptcy Code. *See, e.g., In re Culligan Ltd.*, 2021 Bankr. LEXIS 1783, \*23 (Bankr. S.D.N.Y. 2021) (finding that “[u]ndrawn attorney retainers satisfy the ‘property in the United States’ eligibility requirement of section 109(a) of the Bankruptcy Code”); *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 700 (Bankr. S.D.N.Y. 2017) (citing a retainer held by New York counsel in a New York account as satisfying section 109(a) of the Bankruptcy Code and establishing venue); *In re U.S. Steel Canada Inc.*, 571 B.R. 600, 610 (Bankr. S.D.N.Y. 2017) (“[C]ourts, including this one, have held that an undrawn retainer in a United States bank account qualifies as property in satisfaction of section 109(a)’’); *In re Suntech Power Holdings Co.*, 520 B.R. 399, 416 (Bankr. S.D.N.Y. 2014) (holding that establishing a deposit account in New York “had the effect of establishing a basis for venue in [the Southern District of New York] under 28 U.S.C. § 1410(1)’’); *In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 373–74 (Bankr. S.D.N.Y. 2014) (finding that the debtor “had property in the United States in the form of a retainer[, which] is sufficient to satisfy the requirements of section 109(a) of the Bankruptcy Code,” and that “the Foreign Representatives acted in good faith in transferring the funds to the Client Trust Account” to serve as a retainer).

54. Additionally, this Court has previously held that a debtor’s contract rights, including rights pursuant to debt that contains a New York governing law and forum selection clause, constitute intangible property of the debtor in New York for purposes of section 109(a) of the Bankruptcy Code. *See, e.g., In re Modern Land (China) Co.*, 641 B.R. 768, 793 (Bankr. S.D.N.Y. 2022) (holding that a foreign debtor was a “debtor” under section 109(a) of the Bankruptcy Code because of intangible property rights located in New York State); *In re Olinda Star Ltd.*, 614 B.R. 28, 40 (Bankr. S.D.N.Y. 2020) (holding that a foreign debtor was a “debtor” under section 109(a) of the Bankruptcy Code because of intangible contract rights under a New

York law governed indenture); *In re Avanti Commc 'ns*, 582 B.R. 603, 610–11 (Bankr. S.D.N.Y. 2018) (same); *Berau*, 540 B.R. at 83–84 (same).

55. Here, the Debtor satisfies the eligibility requirement of section 109(a) because the Debtor has property in the United States, including in this jurisdiction. Specifically, the Debtor has property in the United States in the form of a retainer with the Debtor's U.S. counsel, Sidley Austin LLP, which funds are held in a client trust account in New York, New York. Foreign Representative Decl., ¶¶ 15, 52. *See, e.g., Octaviar*, 511 B.R. at 372–73 (Bankr. S.D.N.Y. 2014) (“There is a line of authority that supports the fact that prepetition deposits or retainers can supply ‘property’ sufficient to make a foreign debtor eligible to file in the United States.”) (citing *In re Cenargo Int'l PLC*, 294 B.R. 571, 603 (Bankr. S.D.N.Y. 2003)); *In re Yukos Oil Co.*, 321 B.R. 396, 401–03 (Bankr. S.D. Tex. 2005); *In re Glob. Ocean Carriers*, 251 B.R. 31, 39 (Bankr. D. Del. 2000). Additionally, the Debtor holds certain property rights under the Existing Finance Documents relating to the Existing Notes and the Private 2022 Notes as well as under the New Notes Indentures, each of which is governed by New York law. *See* Foreign Representative Decl., ¶¶ 13, 52; *Avanti*, 582 B.R. at 610–611; *Berau*, 540 B.R. at 83–84. Accordingly, the Debtor meets the general eligibility requirements of section 109(a) of the Bankruptcy Code.

**B. The Debtor Meets the Specific Eligibility Requirements of Section 1517(a) of the Bankruptcy Code**

56. Section 1517(a) of the Bankruptcy Code provides that, after notice and a hearing, “an order recognizing a foreign proceeding shall be entered if . . . (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515.” 11 U.S.C. § 1517(a). Each of these requirements is satisfied for the reasons set forth below.

1. The Hong Kong Proceeding Is a Foreign Proceeding Within the Meaning of Section 1502 of the Bankruptcy Code

57. Courts in this district have previously recognized schemes of arrangement proceedings and similar proceedings as “foreign proceedings” in Hong Kong and in offshore jurisdictions that have analogous English-law based frameworks similar to Hong Kong. *See, e.g., In re Hidili Indus. Int'l Dev. Ltd.*, No. 22-10736 (DSJ) (Bankr. S.D.N.Y. 2022) (ECF No. 16) (recognizing Hong Kong scheme of arrangement); *In re Kaisa Grp. Holdings Ltd.*, No. 16-11303 (SHL) (Bankr. S.D.N.Y. 2016) (ECF No. 22) (recognizing Hong Kong scheme of arrangement); *In re Shanghai Huaxin Grp. (Hongkong) Ltd.*, No. 19-11482 (JLG) (Bankr. S.D.N.Y. 2019) (ECF No. 17) (recognizing Hong Kong provisional liquidation); *In re Atlas Fin. Holdings, Inc.*, No. 22-10260 (LGB) (Bankr. S.D.N.Y. 2022) (ECF No. 18) (recognizing Cayman Islands scheme of arrangement); *In re RongXingDa Dev. (BVI) Ltd.*, No. 22-10175 (DSJ) (Bankr. S.D.N.Y. 2022) (ECF No. 12) (recognizing British Virgin Islands scheme of arrangement).

58. Furthermore, the legal structure governing Hong Kong schemes of arrangement is similar to that governing schemes of arrangement under the laws of the United Kingdom. *See* Counsel Decl., ¶ 10. Courts have consistently recognized schemes of arrangement in the United Kingdom as foreign proceedings. *See, e.g., In re Virgin Atlantic Airways Ltd.*, No. 20-11804 (MEW) (Bankr. S.D.N.Y. 2020) (ECF No. 37); *Lecta Paper UK Ltd.*, No. 19-13990 (MEW) (Bankr. S.D.N.Y. 2020) (ECF No. 12); *In re EnQuest PLC*, No. 16-12983 (MEW) (Bankr. S.D.N.Y. 2016) (ECF No. 14); *In re YH Ltd.*, No. 16-12262 (SCC) (Bankr. S.D.N.Y. 2016) (ECF No. 14); *In re OIC Run-Off Ltd. & London & Overseas Ins. Co. Ltd.*, No. 15-13054 (SCC) (Bankr. S.D.N.Y. 2016) (ECF No. 18); *In re Towergate Fin. Plc*, No. 15-10509 (SMB) (Bankr. S.D.N.Y. 2015) (ECF No. 16); *In re B. Endeavour Shipping Co. Ltd.*, No. 15-10246 (REG) (Bankr. S.D.N.Y. 2015) (ECF No. 10). More generally, the scheme of arrangement structure is provided for in the

legal regimes of a number of different countries, and “U.S. bankruptcy courts have routinely recognized them as ‘foreign proceedings.’” David L. Lawton and Shannon B. Wolf, *The Thing About Schemes in the Scheme of Things: Recognition of Schemes of Arrangement under Chapter 15 of the U.S. Bankruptcy Code*, at 1 (INSOL International Technical Series Issue No. 38, March 2018).

59. Furthermore, the Hong Kong Proceeding on its face meets all the elements of the definition of a “foreign proceeding” under the Bankruptcy Code. Section 101(23) of the Bankruptcy Code defines a “foreign proceeding” as “a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.” 11 U.S.C. § 101(23). The Hong Kong Proceeding satisfies each element of this definition because (i) it is a proceeding that is (ii) judicial in character, (iii) collective in nature, (iv) in a foreign country, (v) authorized or conducted under a law related to insolvency or the adjustment of debts, (vi) in which the Debtor’s assets and affairs are subject to the control or supervision of a foreign court, and (vii) for the purpose of reorganization or liquidation. Each of these elements is addressed separately and in detail below.

a. *The Hong Kong Proceeding Is a Proceeding*

60. The hallmark of a “proceeding” is a “statutory framework that constrains a company’s actions and that regulates the final distribution of a company’s assets” and includes “acts and formalities set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice.” *In re Betcorp Ltd.*, 400 B.R. 266, 277–78 (Bankr. D. Nev. 2009). The Hong Kong Proceeding is governed by the statutory framework set forth in the Companies Ordinance. *See* Counsel Decl., ¶ 12. Specifically, as described in more

detail in the Counsel Declaration, the Companies Ordinance specifies the acceptable procedures for implementing a Hong Kong scheme, including, among other things, commencing the scheme, designating classes of creditors, holding meetings and voting. *See id.*, ¶¶ 12–18. The Companies Ordinance, as supplemented by Hong Kong common law, and as needed, English common law, also sets forth the standards for approval of Hong Kong schemes by the applicable Hong Kong Court. *See id.* Moreover, in this case, the Convening Order required that the Debtor provide the Scheme Creditors with access to a copy of the Explanatory Statement, which provided notice and disclosure regarding the procedures to take place in the Scheme. *See id.* ¶ 35. The Hong Kong Proceeding is therefore a “proceeding” because the Companies Ordinance falls within the type of statutory framework described in applicable case law. *See, e.g., Hidili*, No. 22-10736 (DSJ) (Bankr. S.D.N.Y. 2022) (ECF No. 16); *Betcorp*, 400 B.R. at 277–78.

b. *The Foreign Proceeding Is Judicial in Character*

61. The Hong Kong Proceeding is judicial in nature because there is significant judicial involvement in the scheme process. For example, in *In re Bd. of Dirs. of Hopewell Int'l Ins. Ltd.*, 238 B.R. 25, 52 (Bankr. S.D.N.Y. 1999), this Court stated, “there is significant judicial involvement in this [Bermuda-administered] scheme process[es].” Specifically, the *Hopewell* decision looked to the following elements of the scheme of arrangement process as demonstrating that it was judicial in character:

There are two mandatory court appearances, the first, on the ex parte summons to convene the class meetings and the second, on the sanctioning of the scheme.... Both hearings required the court to review the materials submitted and evaluate them.... With regard to the second hearing, ... the court plays a significant role in that it must assure itself that the scheme is in the best interests of creditors and members. Lastly, creditors and members had a plethora of opportunities to object to the scheme before it was sanctioned ....

*Id.* at 52.

62. Here, the Scheme is being administered in a substantially similar manner as described above in *Hopewell* with the Convening Hearing having already taken place and the Sanction Hearing scheduled for October 5, 2023. *See* Counsel Decl., ¶ 32. The Hong Kong Court has significant oversight over the Hong Kong Proceeding and would require that all necessary disclosures have been made, all notices were sent as required, the meetings were properly constituted (including that the classes were properly identified), and that other technical and procedural requirements have been satisfied. *See id.*, ¶¶ 19–20. Further, before the Hong Kong Court sanctions the Scheme, it must be satisfied that the scheme is fair and will consider whether the terms are such that “an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve.” *See id.*, ¶¶ 19–20, 24; *Re Dorman, Long & Co., Ltd.* 151 L.T.R 347 (Ch. Div. 1934). Absent the Hong Kong Court’s sanction, the Debtor cannot implement the Scheme. *See id.*, ¶ 39. For the foregoing reasons, the Hong Kong Proceeding is judicial in nature.

c. *The Foreign Proceeding Is Collective in Nature*

63. A proceeding is “collective” if it considers the rights and obligations of all creditors. *See In re ABC Learning Centres Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010), *aff’d*, 728 F.3d 301 (3d Cir. 2013); *see also In re ENNIA Caribe Holding N.V.*, 594 B.R. 631, 638 (Bankr. S.D.N.Y. 2018). Here, the Hong Kong Proceeding is a statutory procedure under the laws of Hong Kong that allows the Hong Kong Court to sanction a compromise or arrangement, which has been voted on by the relevant class of creditor or member and approved by the requisite majorities in a collective proceeding. Counsel Decl., ¶¶ 16–18.

64. Furthermore, once the Scheme becomes effective, it will be binding on all Scheme Creditors. *See id.*, ¶ 18. All Scheme Creditors, other than certain Sanctioned Scheme Creditors (as defined in the Scheme), had the opportunity to attend and vote at the Scheme Meeting, subject

to compliance with the applicable procedures specified in the Convening Order and the Explanatory Statement. *See id.*, ¶ 35. Moreover, the Hong Kong Court’s entry of the Convening Order providing for a single voting class of Scheme Creditors signals that any differences in their legal rights with respect to the Debtor, both before and after the effectiveness of the Scheme, did not make it impossible for them to consult together in relation to the proposed compromise or arrangement with a view to their common interest. *See id.*, ¶¶ 19–20, 24. The Hong Kong Proceeding is therefore collective in nature.

d. *The Foreign Proceeding Is Located in a Foreign Territory*

65. The Hong Kong Proceeding was commenced before the Court of First Instance of the High Court of the Hong Kong Special Administrative Region of the People’s Republic of China. Following such commencement, the Hong Kong Court has exercised its authority by, among other things, commencing the Convening Hearing and issuing the Convening Order. Therefore, there can be no doubt that the Hong Kong Proceeding is located in Hong Kong, a foreign territory.

e. *The Foreign Proceeding Is Authorized or Conducted Under Law Related to Insolvency or the Adjustment of Debts*

66. The Hong Kong Proceeding is authorized and being conducted under the Companies Ordinance, which is the Hong Kong law that governs schemes of arrangement in Hong Kong. *See* Counsel Decl., ¶¶ 12-13. A scheme of arrangement under the Companies Ordinance, like an English scheme, is a flexible mechanism that can be used to encompass a large variety of compromises or arrangements between a company and its creditors. *See id.*, ¶¶ 10, 13. In particular, a scheme of arrangement is useful in circumstances in which holdout creditors seek an advantage as against similarly ranked creditors in workout negotiations because they enable companies and their creditors in certain instances to obtain court approval to effect restructuring

measures without having to obtain approval from 100 percent of the affected creditors. *Id.*, ¶ 13. This Court has previously acknowledged that that a Hong Kong scheme of arrangement is a proceeding authorized or conducted under a law related to insolvency or the adjustment of debts. *See, e.g., Hidili.*, No. 22-10736 (DSJ) (Bankr. S.D.N.Y. 2022) (ECF No. 16); *Kaisa*, No. 16-11303 (SHL) (Bankr. S.D.N.Y. 2016) (ECF No. 22). Moreover, courts in this district have also recognized many similarly structured schemes of arrangement under the laws of the United Kingdom. *See, e.g., Lecta*, No. 19-13990 (MEW) (ECF No. 12); *Avanti*, 582 B.R. at 619; *EnQuest*, No. 16-12983 (MEW) (ECF No. 14); *YH Ltd.*, No. 16-12262 (SCC) (ECF No. 14); *OIC Run-Off Ltd.*, No. 15-13054 (SCC) (ECF No. 18); *Towergate Fin.*, No. 15-10509 (SMB) (ECF No. 16); *Endeavour Shipping*, No. 15-10246 (REG) (ECF No. 10).

f. *Under the Foreign Proceeding, the Debtor’s Assets and Affairs Are Subject to the Control or Supervision of a Foreign Court*

67. “[T]he requirement that the debtor’s assets be subject to the control and supervision of a foreign court does not require that the foreign proceedings play out entirely in a judicial context like cases under the Bankruptcy Code. The ability of a party to ask for court assistance concerning the proceeding is sufficient to satisfy this element.” 8 Collier on Bankruptcy, ¶ 1501.03 (16th ed. 2021); *see also ENNIA Caribe*, 594 B.R. at 640 (finding a proceeding subject to supervision of a foreign court where the court’s approval was required to initiate or terminate the proceeding, modify certain debtor contracts and compensate estate professionals). Here, the Hong Kong Court plays multiple supervisory roles in the Hong Kong Proceeding. Specifically, the Hong Kong Court possesses the authority to sanction (or decline to sanction) the Scheme following the Sanction Hearing, and thereby determines whether or not the Debtor will obtain the relief sought. *See* Counsel Decl., ¶ 19. In addition, Scheme Creditors and other creditors will have the opportunity to seek the assistance of the Hong Kong Court by raising objections at the

Sanction Hearing. *See id.*, ¶ 25. Moreover, the Scheme provides that the courts of Hong Kong will have exclusive jurisdiction to hear and determine any suit, action, or proceeding, and to settle any dispute that arises out of or in connection with the terms of the Scheme or its implementation or out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme. *See id.*, ¶ 31. The Scheme is therefore subject to the control or supervision of a foreign court.

g. *The Foreign Proceeding Is for the Purpose of Reorganization or Liquidation of the Debtor*

68. As described more fully in the Foreign Representative Declaration, the purpose of the Hong Kong Proceeding is the restructuring of the Existing Debt of the Debtor. Foreign Representative Decl., ¶¶ 35, 56. Specifically, the Scheme Creditors will release the Debtor and the Subsidiary Guarantors, among others, from their respective obligations and liabilities under or in connection with the Existing Debt and Existing Finance Documents and will receive the Restructuring Consideration. *Id.*, ¶¶ 35–38. The Scheme, including the cancellation of the Existing Debt and other releases, will become effective on its terms once a sealed copy of the Sanction Order entered by the Hong Kong Court has been filed with the Hong Kong Registrar and in accordance with the provisions of the Scheme itself. *Id.*, ¶¶ 39, 47. Accordingly, the Hong Kong Proceeding, by effectuating the restructuring of the Debtor’s Existing Debt, is for the purpose of reorganization of the Debtor.

2. The Foreign Proceeding Is a “Foreign Main Proceeding”

69. Under section 1502(4) of the Bankruptcy Code, the term “foreign main proceeding” means “a foreign proceeding pending in the country where the debtor has the center of its main interests” (“COMI”). *See, e.g.*, *Modern Land*, 641 B.R. at 781 (recognizing foreign main proceeding); *Ocean Rig*, 570 B.R. at 702 (recognizing foreign main proceeding); *Suntech*,

520 B.R. at 416–17 (same); *In re Fairfield Sentry Ltd.*, 714 F.3d 127 (2d Cir. 2013) (affirming recognition of foreign main proceeding).

70. While section 1516 of the Bankruptcy Code creates a presumption that a debtor’s registered office is its COMI, the presumption may be rebutted by contrary evidence. *See* 11 U.S.C. § 1516(c). Courts look to the totality of the circumstances and determine a chapter 15 debtor’s COMI based on the debtor’s activities at or around the filing date of the Chapter 15 petition, without regard to the debtor’s historic operational activity. *In re Mod. Land (China) Co.*, 641 B.R. 768, 781; 786 (Bankr. S.D.N.Y. 2022) (citing *Fairfield Sentry*, 714 F.3d at 137).

71. Specifically, when assessing COMI, courts consider a variety of factors including, “the location of the debtor’s headquarters; the location of those who actually manage the debtor . . . the location of the debtor’s primary assets; the location of the majority of the debtor’s creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.” *Modern Land*, 641 B.R. at 782 (quoting *In re SphinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006)), *aff’d sub nom. Krys v. Official Comm. of Unsecured Creditors of Refco Inc. (In re SphinX Ltd.)*, 371 B.R. 10 (S.D.N.Y. 2007). The *Modern Land* court further noted that “consideration of these specific factors is neither required nor dispositive.” *Id.* In *SphinX*, this Court explained that these factors should not be applied “mechanically” and “[i]nstead, they should be viewed in light of Chapter 15’s emphasis on protecting the reasonable interests of parties in interest pursuant to fair procedures and the maximization of the debtor’s value.” *SphinX*, 351 B.R. at 117. The Second Circuit has underscored the importance of criteria that are both objective and ascertainable to third parties to determine a debtor’s COMI. *See* *Fairfield Sentry*, 714 F.3d at 137. Whether a third party could

objectively ascertain a debtor's COMI may be determined "by examining factors 'in the public domain.'" *Id.*, at 137. Critically, the *SphinX* court also provided that "because their money is ultimately at stake, one generally should defer . . . to the creditors' acquiescence in or support of a proposed COMI." *Id.*; *see also Modern Land*, 641 B.R. 786–87 (consider "expectations and intentions" of the scheme creditors as a COMI factor).

72. The Hong Kong Proceeding is a "foreign main proceeding" with respect to the Debtor based on these factors for the reasons set forth below.

a. *Location of the Debtor's Headquarters*

73. Although the Debtor is incorporated in the Cayman Islands, the facts herein rebut the presumption of COMI in the Cayman Islands and establish COMI in Hong Kong. *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325, 335 (S.D.N.Y. 2008) (finding that section 1516(c) of the Bankruptcy Code "creates no more than a rebuttable evidentiary presumption, which may be rebutted notwithstanding a lack of party opposition"). The Debtor does not conduct business in the Cayman Islands. Foreign Representative Decl., ¶ 58(a). In fact, the Debtor is registered as an exempted company with limited liability in the Cayman Islands and registered on the Hong Kong Registrar, as is required for all companies with an established place of business in Hong Kong. *Id.*, ¶¶ 7, 58(a). Pursuant to section 174 of the Cayman Companies Law, "[a]n exempted company shall not trade in the Islands with any person, firm or corporation except in furtherance of the business of the exempted company carried on outside the Islands." Cayman Companies Law § 174. Additionally, the Debtor has a principal place of business in Hong Kong and its shares have been listed on the main board of HKEX since October 7, 2010. Foreign Representative Decl., ¶ 21, 58(a).

74. Therefore, because the Debtor does not conduct business from its Cayman Islands location and its principal place of business is in Hong Kong, the Debtor's headquarters is located in Hong Kong.

b. *Location of Those Who Manage the Debtor*

75. Hong Kong is the primary location of the individuals who actually manage the Debtor for purposes of determining its COMI, given the flexible analysis that courts use when determining such location. *See In re Serviços de Petróleo Constellation S.A.*, 600 B.R. 237, 273 (Bankr. S.D.N.Y. 2019) (finding that location of management analysis should be “flexible” and reflect the realities of a particular business).

76. As a holding company, the Debtor primarily issued debt obligations to fund its subsidiaries' operations and since the second quarter of 2022, its operations have predominantly consisted of its restructuring efforts, which have been coordinated and conducted in large part in Hong Kong. Foreign Representative Decl., ¶ 58(b). In addition, the Debtor has multiple directors and a member of senior management based in Hong Kong, who have played active roles in monitoring and coordinating the Debtor's operations leading up to and during the Hong Kong Proceeding and this Chapter 15 Case. *Id.*, ¶¶ 23, 58(b). Specifically, the Foreign Representative, who is the Debtor's Chief Financial Officer and Company Secretary, resides in Hong Kong and has been overseeing the Restructuring and this Chapter 15 Case. *Id.*, ¶ 58(b) Also, although not all of the members of the Debtor's Board reside in Hong Kong, the entire Board, including the member who resides in Hong Kong, has been primarily focused on monitoring and coordinating the Debtor's affairs in connection with the Hong Kong Proceeding. The Board authorized the retention of the Debtor's advisors, including its Hong Kong legal counsel in May 2022, and was involved in the negotiation of the various documents involved in the Restructuring and the Scheme. *Id.* For example, the Board approved the terms of the Restructuring, including the RSA (as defined

below), which is governed by Hong Kong law, and has overseen the Debtor’s development of the Scheme. *Id.* Where, as here, a debtor’s activities as of the Chapter 15 petition date include restructuring activities and administrative functions, the Second Circuit has directed that those activities should be considered in the COMI analysis. *See Fairfield Sentry*, 714 F.3d at 137.

77. Accordingly, under a flexible approach that takes into account the Debtor’s negligible operations other than restructuring activities, Hong Kong is the primary location of those who manage the Debtor.

c. *Location of the Debtor’s Primary Assets*

78. The “location of the debtor’s assets” COMI factor is of limited relevance here, because the Debtor is a holding company with no material operations and primarily intangible assets. The Debtor’s primary assets are comprised of amounts due from its subsidiaries (including intercompany receivables owed by Hong Kong subsidiaries) as well as its direct and indirect equity interests in its subsidiaries, including the HK Subsidiary Guarantors, which are incorporated in Hong Kong and indirectly owned by the Debtor. Foreign Representative Decl., ¶ 58(c). The Debtor also maintains some of its cash in bank accounts located in Hong Kong. *Id.*

79. Therefore, this factor weighs in favor of a determination that the Debtor’s COMI is in Hong Kong.

d. *Location of the Majority of the Debtor’s Creditors*

80. Even if no single location contains the majority of the Debtor’s creditors, a determination that the Debtor’s COMI is in Hong Kong is entirely consistent with the expectations of the Scheme Creditors and other interested parties. Over 60% of the Scheme Creditors who have acceded to the RSA have registered Hong Kong addresses. *Id.*, ¶ 58(d). Furthermore, although the Existing Notes are governed by New York law, certain language in the Existing Notes indentures clearly identify the Debtor’s presence and activities in Hong Kong, and the majority of

the Existing Private Debt is governed by Hong Kong law. *Id.*, ¶¶ 22, 58(d). Also, certain advisors to the creditors when the Existing Debt was originally entered into were based in Hong Kong. *Id.*, ¶ 58(d). The principal advisors of the Debtor and of the Ad Hoc Group involved in the Restructuring are similarly based in Hong Kong. *Id.* Furthermore, the Debtor's publicly-available financial statements are prepared and audited in accordance with the Hong Kong Financial Reporting Standards. *Id.*, ¶¶ 21, 58(d). Accordingly, the Scheme Creditors could reasonably ascertain that Hong Kong is the Debtor's COMI and that any attempt to wind the Debtor up (*i.e.*, file for insolvency) only would be effective as against the Debtor if such proceedings were held in Hong Kong. Indeed, the evidence suggests that certain Scheme Creditors did reach such a conclusion; when certain Scheme Creditors sought to wind-up the Debtor, they filed or supported the Petition and Re-Amended Petition in the Hong Kong Court. *Id.*, ¶¶ 27, 58(d).

81. Additionally, holders of more than 87% of the Existing Debt expressly agreed to support a Hong Kong Restructuring pursuant to the RSA and the Scheme Creditors overwhelmingly support the Debtor's Restructuring with over 99% of Existing Debt holders present and voting at the Scheme Meeting having delivered instructions to vote in favor of the Scheme. *Id.*, ¶¶ 33, 58(d). No Scheme Creditor has raised issues about the propriety of Hong Kong as the COMI of the Debtor or about any actions of management in proffering a Hong Kong COMI and establishment in Hong Kong. *Id.*, ¶ 58(d).

82. The Debtor therefore submits that this Court should consider “defer[ing] . . . to the creditors’ acquiescence in or support of” the Debtor’s COMI being located in Hong Kong and take into account the reasonable expectations of the creditors in evaluating this factor. *SphinX*, 351 B.R. at 117.

e. *The Jurisdiction Whose Law Would Apply to Most Disputes.*

83. Hong Kong law likely would apply to most disputes involving the Debtor, particularly with respect to the Scheme Creditors, for a variety of reasons. As noted above, the Debtor maintains a principal place of business in Hong Kong and therefore must submit to Hong Kong law. Foreign Representative Decl., ¶¶ 21, 58(e). Furthermore, because the Debtor's shares are listed on HKEX, the Debtor must submit to the jurisdiction of the Hong Kong Securities and Futures Commission. *Id.*, ¶ 58(e). As for disputes with Scheme Creditors, the RSA and the majority of the Existing Private Debt are governed by Hong Kong law. *Id.*, ¶¶ 22, 58(e). Moreover, as discussed above, certain Scheme Creditors filed or supported the Petition and Re-Amended Petition to wind up the Debtor in Hong Kong, which the Debtor was required to address. *Id.*, ¶¶ 27, 58(e). Finally, the Scheme Meeting occurred in Hong Kong, and the Hong Kong Court is overseeing the Scheme by conducting the Convening Hearing and the Sanction Hearing in Hong Kong. *See id.*, ¶¶ 40–47, 58(e).

84. Therefore, many, if not most, disputes with the Debtor would have a nexus to Hong Kong and will therefore be subject to Hong Kong law. Consequently, the presumption that Debtor's COMI is the location of its registered office is rebutted by contrary evidence, and the Debtor's COMI is located in Hong Kong. Moreover, this Court and others have similarly found the COMI presumption rebutted for non-Hong Kong incorporated companies with Hong Kong scheme proceedings. *See Kaisa*, No. 16-11303 (SHL) (Bankr. S.D.N.Y. 2016) (ECF No. 15) (granting recognition of a Hong Kong proceeding concerning a company incorporated in the Cayman Islands as a foreign main proceeding); *see also In re Dingway Inv. Ltd.*, No. 22-10648-BKC-LMI (Bankr. S.D. Fla. 2022) (ECF No. 14) (granting recognition of a Hong Kong proceeding concerning a company incorporated in the British Virgin Islands as a foreign main proceeding).

85. Accordingly, because the Debtor’s COMI is located in Hong Kong, the Hong Kong Proceeding is a “foreign main proceeding” and the first element of section 1517(a) of the Bankruptcy Code is satisfied.

3. In the Alternative, the Court Should Find that the Foreign Proceeding Is a “Foreign Nonmain Proceeding”

86. While the Hong Kong Proceeding clearly satisfies the statutory requirement for a foreign main proceeding, out of an abundance of caution, the Debtor seeks, in the alternative, recognition of the Hong Kong Proceeding as a foreign nonmain proceeding. Courts recognize a foreign proceeding as a “foreign nonmain proceeding” if “the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.” 11 U.S.C. § 1517(b)(2). Section 1502(2) defines “[e]stablishment” as “any place of operations where the debtor carries out a nontransitory economic activity.” *Modern Land*, 641 B.R. at 772; *see also In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 70 (Bankr. S.D.N.Y. 2011), *aff’d* 474 B.R. 88 (S.D.N.Y. 2012) (“Millennium Glob. I”). Additionally, courts have required proof of more than a “mail-drop presence.” *Serviços de Petróleo*, 600 B.R. at 277 (citation omitted); 11 U.S.C. § 1502(2). At least one court—noting the “paucity of U.S. authority” on the subject—has favorably cited a “persuasive” English law holding that the presence of an asset and minimal management or organization can create a debtor establishment. *See Millennium Glob. I*, 458 B.R. at 84–85 (citing *Shierson v. Vlieland-Boddy*, [2005] EWCA Civ. 974, [2005] W.L.R. 3966 (2005)). However, courts require “additional connections” than that of maintaining a registered office or administering annual filings and payment of annual fees in the jurisdiction of the proceeding. *Modern Land*, 641 B.R. at 786.

87. As with COMI, whether the debtor has an “establishment” in a country is determined at the time of filing the Chapter 15 petition. *See Beveridge v. Vidunas (In re O'Reilly)*,

598 B.R. 784, 803 (Bankr. W.D. Pa. 2019) (adopting *Fairfield Sentry* and *In re Ran* findings that “the presumptive date from which [a c]ourt is to ascertain [a] debtor’s center of main interests and/or establishment is the date the Chapter 15 petition was filed”). Several factors “contribute to identifying an establishment: the economic impact of the debtor’s operations on the market, the maintenance of a ‘minimum level of organization’ for a period of time, and the objective appearance to creditors whether the debtor has a local presence.” *Millennium Glob. I*, 458 B.R. at 32. Showing impact of the debtor’s activities on the foreign jurisdiction involves a “showing of a local effect on the marketplace.” *In re Creative Fin., Ltd.*, 543 B.R. 498, 520 (Bankr. S.D.N.Y. 2016).<sup>12</sup> This is evidenced by, among other things, engagement of “local counsel and commitment of capital to local banks.” *Millennium Glob. I*, 458 B.R. at 86–67.

88. In this case, Hong Kong is not merely a letterbox jurisdiction for the Debtor. The Debtor conducts significant business activities within Hong Kong. As discussed above, the Debtor maintains a principal place of business in Hong Kong; its shares have been listed in Hong Kong on the main board of HKEX for over 10 years; it has multiple directors and a member of senior management based in Hong Kong; it is registered and files annual returns with the Hong Kong Registrar; and it publicly files its financial statements in Hong Kong. *See* Foreign Representative Decl., ¶¶ 21, 23, 60. The Group’s Restructuring efforts—which have constituted the bulk of the Debtor’s operations since the second quarter of 2022—have been coordinated in large part from Hong Kong. *See id., Id.*, ¶¶ 23, 60. Additionally, the Foreign Representative, who is located in Hong Kong, has played an active role in overseeing and managing the Debtor’s affairs and evaluating the proposed Restructuring, and has supported filings

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<sup>12</sup> In *Creative Finance*, this Court found that the minimal acts performed by the liquidator were insufficient to support a BVI establishment. Those concerns are inapplicable to this case because the Foreign Representative has diligently undertaken the tasks that the Debtor authorized him to perform, as discussed above. Moreover, the *Creative Finance* Court premised its decision on certain findings of bad faith, which are not present here.

and applications to the Hong Kong Court. *Id.* These facts are sufficient to, at a minimum, support the finding of an “establishment” in Hong Kong within the meaning of section 1502(2) of the Bankruptcy Code. *See, e.g., Servicos de Petroleo* 600 B.R. at 278, 281–82 (recognizing that “COMI is a flexible determination and not a rigid application of factors” and finding that certain debtor subsidiaries had substantial and non-transitory ties to Brazil, which was sufficient to create an establishment in Brazil for a Luxembourg-based parent); *see also Hidili.*, No. 22-10736 (DSJ) (Bankr. S.D.N.Y. 2022) (ECF No. 16) (finding Cayman incorporated company had an establishment in Hong Kong).

89. Denying recognition of the Hong Kong Proceeding as either a foreign main or nonmain proceeding would leave the Debtor without access to U.S. courts. Such a result would be at odds with the purpose of Chapter 15 of the Bankruptcy Code—to engender cooperation among foreign courts with respect to restructuring and insolvency proceedings. *See Millennium Glob. I*, 458 B.R. at 69, 81–82.

4. The Chapter 15 Case Has Been Commenced by a Duly Authorized Foreign Representative

90. The Petitioner is duly authorized to serve in his capacity as foreign representative in this Chapter 15 Case and, as such, satisfies the second condition for entry of an order recognizing such proceeding under section 1517(a) of the Bankruptcy Code. The term “foreign representative” is defined under section 101(24) of the Bankruptcy Code as “a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.” 11 U.S.C. § 101(24).

91. The definition of foreign representative does not require that the individual be appointed by a foreign court or other judicial body. *See, e.g., In re Vitro S.A.B. de C.V.*, 701 F.3d

1031, 1047 (5th Cir. 2012), *cert. denied*, 133 S. Ct. 1862 (2013); *In re Cell C Proprietary Ltd.*, 571 B.R. 542, 550 (Bankr. S.D.N.Y. 2017); *In re OAS S.A.*, 533 B.R. 83, 94-95 (Bankr. S.D.N.Y. 2015). Instead, courts have recognized that it is sufficient that the foreign representative be authorized to act “in the context” of a foreign bankruptcy proceeding, such as by resolution of the debtor’s board of directors authorizing the representative to commence foreign bankruptcy proceedings on the debtor’s behalf. *See, e.g.*, *In re Vitro*, 701 F.3d at 1047, 1049 (affirming recognition of foreign representatives appointed by boards of directors); *In re Cell C*, 571 B.R. at 553 (listing several cases recognizing that a board of directors may authorize a person to act as the debtor’s foreign representative in a chapter 15 proceeding); *In re Winsway*, No. 16-10833 (MG) (Bankr. S.D.N.Y. 2016) (ECF No. 13) (recognizing a foreign representative appointed by the board of directors as a duly appointed foreign representative of a Hong Kong scheme of arrangement).

92. Additionally, bankruptcy courts may presume that the person petitioning for Chapter 15 recognition is a foreign representative if the decision or certificate from the foreign court so indicates. *See* 11 U.S.C. § 1516(a); *Ocean Rig*, 570 B.R. at 700; *In re SphinX, Ltd.*, 351 B.R. at 116–17 (holding that section 101(24) of Bankruptcy Code was satisfied where foreign representatives submitted a “copy of [a Cayman court’s] order appointing them to administer the [d]ebtors’ winding up under [Cayman law] and authorizing their commencement of these Chapter 15 cases”).

93. Here, on July 18, 2023, the Board passed a resolution authorizing the Petitioner to act as foreign representative of the Hong Kong Scheme. Foreign Representative Decl., ¶ 40. This Court has previously acknowledged that persons authorized by foreign courts to serve as foreign representatives under U.S. bankruptcy proceedings and those persons authorized to serve as a foreign representative through a resolution passed by the debtor’s board of directors constitute

“foreign representatives” under the Bankruptcy Code. *See, e.g., Hidili*, No. 22-10736 (DSJ) (Bankr. .S.D.N.Y. 2022) (ECF No. 16) (holding that a “duly authorized representative” pursuant to a written board resolution in a Hong Kong proceeding was a “foreign representative” under the Bankruptcy Code); *Ocean Rig*, 570 B.R. at 701 (holding that “duly authorized representative[s] of the [Foreign Debtors]” in a Cayman proceeding were “foreign representatives” under the Bankruptcy Code); *Olinda Star Ltd.*, 614 B.R. at 40 (finding that a legal person authorized by a Cayman Court to serve as scheme administrator and foreign representative was a “foreign representative” under the Bankruptcy Code); *Avanti*, 582 B.R. at 614–15 (providing that an individual authorized as a foreign representative by the debtor’s board of directors and the debtor’s UK proceeding was a “foreign representative” under the Bankruptcy Code); *Winsway*, No. 16-10833 (MG) (ECF No. 13) (recognizing a foreign representative appointed by the board of directors as a duly appointed foreign representative of a Hong Kong scheme of arrangement). Accordingly, the Petitioner is a proper “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code.

**C. The Petition for Recognition Meets the Requirements of Section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4)**

94. This Chapter 15 Case was duly and properly commenced as required by section 1504 and 1509 of the Bankruptcy Code by filing a petition for recognition pursuant to section 1515(a) of the Bankruptcy Code. Moreover, pursuant to section 1515(b) of the Bankruptcy Code, a petition for recognition must be accompanied by one of the following:

- (1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;
- (2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or

(3) in the absence of evidence referred to in paragraphs (i) and (ii), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

11 U.S.C. § 1515(b).

95. A copy of the Board Resolutions authorizing commencement of this Chapter 15 Case is attached to the Foreign Representative Declaration as Exhibit A. Additionally, as discussed above, the Convening Order (attached to the Counsel Declaration as Exhibit B) constitutes a decision of the Hong Kong Court commencing the Hong Kong Proceeding, upon which commencement the Petitioner is authorized to act as the Debtor's Foreign Representative and to act as the Debtor's agent in seeking any relief available to a "foreign representative" under Chapter 15 of the Bankruptcy Code, including, among other things, to seek recognition of the Scheme.

96. The filed petition for recognition was accompanied by all fees, documents, and information required by the Bankruptcy Code and the Bankruptcy Rules, including (i) a corporate ownership statement containing the information required by Bankruptcy Rule 7007.1; (ii) a list containing (a) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtor, (b) all parties to litigation pending in the United States in which the Debtor is a party at the time of the filing of this Chapter 15 Case, and (c) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (iii) a statement identifying all foreign proceedings with respect to the Debtor that are known to the Foreign Representative; and (iv) a certified copy of the Convening Order. *See Supporting Documents*, filed contemporaneously herewith.

97. Having filed the above-referenced documents and because the Court is entitled to presume the authenticity of such documents filed in connection with the petition for recognition under section 1516(b) of the Bankruptcy Code, the requirements of section 1515 of the

Bankruptcy Code and Bankruptcy Rule 1007(a)(4) have been met and this Chapter 15 Case was properly commenced. *See* 11 U.S.C. §§ 1504, 1509(a), 1515; Bankruptcy Rule 1007(a)(4).

98. As demonstrated above, the Debtor also meets both the general eligibility requirements of section 109(a) of the Bankruptcy Code and the specific eligibility requirements of section 1517(a) of the Bankruptcy Code. Therefore, the Debtor is eligible for Chapter 15 relief.

**D. Section 1520 Protections Shall Apply Automatically Upon Recognition**

99. Section 1520(a) of the Bankruptcy Code sets forth a series of statutory protections that automatically result from the recognition of a foreign main proceeding, including the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtor and its property located within the territorial jurisdiction of the United States. *See* U.S.C. § 1520(a). Given that the protections set forth in section 1520(a) arise automatically from the recognition of a foreign main proceeding under section 1517, the Foreign Representative respectfully submits that no further showing is required to the extent the Court recognizes the Hong Kong Proceeding as a foreign main proceeding.

**II. Enforcement of the Sanction Order and Scheme and Related Discretionary Relief Pursuant to Section 1521 Is Proper**

100. The Foreign Representative respectfully requests that the Court provide for enforcement in the United States of the Scheme and the Hong Kong Orders, including provisions therein approving the Scheme and the Restructuring pursuant to section 1521(a) of the Bankruptcy Code.

101. Upon recognition of a foreign proceeding as a foreign main proceeding, certain provisions of the Bankruptcy Code are made applicable automatically to a Chapter 15 case as a matter of right pursuant to section 1520 of the Bankruptcy Code. In addition to these protections, a foreign representative may request additional “appropriate relief” pursuant to

section 1521(a) of the Bankruptcy Code, including “any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a) [of the Bankruptcy Code].” 11 U.S.C. § 1521(a)(7). Section 1521(a) of the Bankruptcy Code authorizes the Court to grant “any appropriate relief” to a foreign representative “where necessary to effectuate the purpose of [Chapter 15] and to protect the assets of the debtor or the interests of the creditors,” provided that the interests of creditors and other interested entities are sufficiently protected. 11 U.S.C. §§ 1521(a), 1522(a); *see also Avanti*, 582 B.R. at 612 (“The discretion that is granted is exceedingly broad, since a court may grant any appropriate relief that would further the purposes of Chapter 15 and protect the debtor’s assets and the interests of creditors.”) (internal citations omitted). Such relief may include:

- (1) staying the commencement or continuation of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);
- (2) staying execution against the debtor’s assets to the extent it has not been stayed under section 1520(a);
- (3) suspending the right to transfer, encumber, or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);
- (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities;
- (5) entrusting the administration or realization of all or part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;
- (6) extending relief granted under section 1519(a); and
- (7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550 and 724(a).

11 U.S.C. § 1521(a).

102. The Court’s authority to grant each form of relief requested pursuant to section 1521 of the Bankruptcy Code is subject to the same two overlapping conditions because section 1521(a) provides that any relief granted pursuant to section 1521 must be “necessary to effectuate the purposes of [Chapter 15] and to protect the assets of the debtor,” and the Court must be satisfied that “the interests of creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a).

103. A determination of sufficient protection “requires a balancing of the respective parties’ interests.” *In re AJW Offshore, Ltd.*, 488 B.R. 551, 559 (Bankr. E.D.N.Y. 2013) (citing *SNP Boat Serv. S.A. v. Hotel Le St. James*, 483 B.R. 776, 784 (S.D. Fla. 2012)); *In re Qimonda AG Bankr. Litig.*, 433 B.R. 547, 556–58 (E.D. Va. 2010); *CT Inv. Mgmt. Co. v. Cozumel Caribe, S.A. de C.V.*, 482 B.R. 96, 108 (Bankr. S.D.N.Y. 2012). Courts have also explained “sufficient protection” as:

embodying three basic principles: ‘[(i)] the just treatment of all holders of claims against the bankruptcy estate, [(ii)] the protection of U.S. claimants against prejudice and inconvenience in the processing of claims in the [foreign] proceeding, and [(iii)] the distribution of proceeds of the [foreign] estate substantially in accordance with the order prescribed by U.S. law.’

*ENNIA Caribe*, 596 B.R. at 322-23 (quoting *In re Atlas Shipping A/S*, 404 B.R. 726, 740 (Bankr. S.D.N.Y. 2009) (quoting *In re Artimm, S.r.L.*, 335 B.R. 149, 160 (Bankr. C.D. Cal. 2005))).

104. Here, both the three-factor *Atlas Shipping* test and the general balancing test favor granting the requested relief.

**A. Just Treatment of All Holders of Claims Against or Interests in the Debtor’s Property**

105. The requirement to reasonably assure “just treatment of all holders of claims against or interests in the debtor’s property” is satisfied where the applicable foreign insolvency law

provides a comprehensive procedure for the orderly resolution of claims and the equitable distribution of assets among all of the estate's creditors in one proceeding. *See, e.g., In re Bd. of Dirs. of Telecom Arg., S.A.*, 528 F.3d 162, 170 (2d Cir. 2008) ("The 'just treatment' factor is satisfied upon a showing that the applicable law 'provides for a comprehensive procedure for the orderly and equitable distribution of [the debtor]'s assets among all of its creditors'") (citing *In re Treco*, 240 F.3d 148, 158 (2d Cir. 2001)); *In re Culmer*, 25 B.R. 621, 629 (Bankr. S.D.N.Y. 1992).

106. Here, the implementation of the Scheme will result in the Scheme Creditors receiving the Restructuring Consideration, as described in greater detail above, in the Foreign Representative Declaration, and in the Explanatory Statement. The Scheme will result in the same treatment for each Scheme Creditor as other similarly situated Scheme Creditors. Moreover, the terms of the Scheme require approval of the Hong Kong Court in the form of the Sanction Order. Hence, the Scheme and Sanction Order, once entered, will be the result of a proceeding (*i.e.*, the Hong Kong Proceeding) in which all creditors were treated fairly and justly in compliance with Hong Kong law.

**B. Protection of Claim Holders in the United States Against Prejudice and Inconvenience in the Processing of Claims in the Foreign Proceeding**

107. The Scheme addresses only the claims of the Scheme Creditors, and there is no need for any Scheme Creditor to file a claim in the Hong Kong Proceeding to receive the same treatment as other similarly situated Scheme Creditors. Accordingly, no creditor in the United States will be required to process a claim in the foreign proceeding and accordingly no creditor is inconvenienced thereby. In any event, all Scheme Creditors were given adequate notice of the Scheme, and the process for participating in or objecting to the Scheme is the same for United States creditors as all other creditors. To the extent participating in or objecting to the Scheme is analogous to filing a claim, this factor is satisfied. *C.f. Treco*, 240 F.3d at 158; *In re Petition of*

*Hourani*, 180 B.R. 58, 68 (Bankr. S.D.N.Y. 1995) (holding that this factor is satisfied where creditors are given adequate notice of timing and procedures for filing claims, and such procedures do not create any additional burdens for a foreign creditor to file a claim).

**C. Distribution of Proceeds Substantially in Accordance with the Bankruptcy Code**

108. The third factor considers whether distribution of the Debtor's property will substantially accord with the order of distribution available under the Bankruptcy Code. The "substantially in accordance" factor does not require that the foreign distribution be identical to United States bankruptcy law. *In re Ionica PLC*, 241 B.R. 829, 836 (Bankr. S.D.N.Y. 1999) ("Section 304(c)(4) only requires that the foreign distribution scheme be 'substantially in accordance' with United States bankruptcy law; it does not have to mirror the United States distribution rules.") (citations omitted). Here, as described in more detail above and in the Explanatory Statement, the Debtor seeks to restructure the Debtor and the Subsidiary Guarantor's liabilities under the Existing Debt. Subject to the terms of the Scheme, the Scheme Creditors will release the Debtor and the Subsidiary Guarantors, among others, from their respective obligations and liabilities under or in connection with the Existing Debt, in return for which the Scheme Creditors will receive the Restructuring Consideration. The Scheme does not contemplate any other class of creditors, and no other creditors are anticipated to receive the Restructuring Consideration. Accordingly, the priority in right of payment and in distribution of the Restructuring Consideration is effectively the same as the manner in which such rights and distributions would be made under the Bankruptcy Code.

**D. The General Balancing Test Weighs in Favor of Granting Relief**

109. With respect to the general balancing test, the Debtor and the Scheme Creditors have a strong interest in the availability of a means to determine how property will be distributed

in a collective proceeding because “[t]he equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding.” *In re Atlas Shipping A/S*, 404 B.R. 726, 737 (Bankr. S.D.N.Y. 2009). As discussed above, the Scheme is an appropriate mechanism to achieve this important goal. The requested relief, including enforcement of the Scheme and the Restructuring, is necessary to effectively utilize this mechanism. Moreover, sanction of the Scheme requires that greater than a fifty percent (50%) majority in number of Scheme Creditors, representing at least seventy-five percent (75%) in value of the relevant creditors of the Debtor present and voting at the Scheme Meeting, vote in favor of the Scheme. Counsel Decl., ¶ 17. In this instance, holders of more than 87% of the Existing Debt expressly agreed to support a Hong Kong restructuring pursuant to the RSA. Foreign Representative Decl., ¶¶ 33, 58(d). Additionally, the Scheme Creditors overwhelmingly supported the Debtor’s Hong Kong restructuring, with over 99% of Existing Debt holders present and voting at the Scheme Meeting voting in favor of the Scheme. *Id.*, ¶ 58(d). Such creditors have a significant interest in receiving the benefits of the proposed Restructuring, of which the Scheme is an integral component. On the other side of the ledger, any objecting creditors will still receive the same treatment as other similarly situated creditors and will benefit from the procedural protections available in the Hong Kong Proceeding, so these creditors’ interests are protected. *See* Counsel Decl., ¶¶ 17, 21, 36. Moreover, for the reasons described above, the Scheme Creditors had ample notice of the possibility, and are sufficiently protected by the procedures of, such a collective proceeding.

110. Finally, the relief requested here clearly furthers the goals and purposes of Chapter 15 itself. *See* 11 U.S.C. § 1501 (explaining that Chapter 15 filing’s “objectives” include “cooperation between (a) courts of the United States . . . and (b) the courts and other

competent authorities of foreign countries”). By ensuring that the Debtor can effectuate the terms of the Scheme, particularly with respect to distribution of Restructuring Consideration, once approved by the Hong Kong Court, the relief requested “would assist in the efficient administration of this cross-border insolvency proceeding, and would not harm the interests of the [Debtor] or [its] creditors.” *In re Grant Forest Prods., Inc.*, 440 B.R. 616, 621 (Bankr. D. Del. 2010).

111. Accordingly, the Foreign Representative respectfully submits that enforcement of the Scheme is necessary and appropriate.

### **III. Enforcement of the Scheme Is Also Proper Under Section 1507**

112. The Court may act pursuant to section 1507 of the Bankruptcy Code to provide “additional assistance” to foreign representatives, provided that such assistance is “consistent with the principles of comity” and cooperation with foreign courts. 11 U.S.C. § 1507; *see also Avanti*, 582 B.R. at 615; *In re Atlas Shipping A/S*, 404 B.R. 726, 737-38 (Bankr. S.D.N.Y. 2009); *Bear Stearns*, 374 B.R. at 130.

113. In exercising discretion to grant relief under section 1507(a) of the Bankruptcy Code, courts are guided by the standards set forth in section 1507(b) of the Bankruptcy Code, which provide that:

In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

- (1) just treatment of all holders of claims against or interests in the debtor’s property;
- (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
- (3) prevention of preferential or fraudulent dispositions of property of the debtor;

- (4) distribution of proceeds of the debtor property substantially in accordance with the order prescribed by this title; and
- (5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

11 U.S.C. § 1507(b).

114. Courts have held that principles of comity are key to determining whether to grant additional assistance. *See, e.g., In re Metcalfe & Mansfield Alt. Inv.*, 421 B.R. 685, 696 (Bankr. S.D.N.Y. 2010) (“Section 1507 directs the court to consider comity in granting additional assistance to the foreign representative”); *Atlas Shipping*, 404 B.R. at 738 (noting that post-recognition relief is “largely discretionary and turns on subjective factors that embody principles of comity”) (quoting *Bear Stearns*, 389 B.R. at 333).

115. As discussed above, the relief requested is consistent with the goals of international cooperation and assistance to foreign courts embodied in Chapter 15 of the Bankruptcy Code, and is necessary to the implementation of the Scheme.

116. As the Second Circuit has recognized, “[t]he equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail.” *Victrix S.S. Co., SA. V. Salen Dry Cargo A.B.*, 825 F.2d 709, 713-14 (2d Cir. 1987); *see also Cunard S.S. Co. v. Salen Reefer Servs. AB*, 773 F.2d 452, 458 (2d Cir. 1985) (“The granting of comity to a foreign proceeding enables the assets of a debtor to be dispersed in an equitable, orderly and systematic manner, rather than in a haphazard, erratic or piecemeal fashion.”). Over a hundred years ago, the Supreme Court recognized the need to give effect to foreign schemes of arrangement in order to further these goals, reasoning that:

[u]nless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail. All home

creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries.

*Canada S. Ry. Co. v. Gebhard*, 109 U.S. 527, 539 (1883). If this Court refuses to enforce the Scheme in the United States, Scheme Creditors may pursue claims against the Debtor thereby jeopardizing the uniform and orderly rescheduling of the financial affairs of the Debtor contemplated by the Scheme.

#### **IV. Enforcement of the Scheme and Sanction Order Is Consistent with Principles of Comity**

117. Courts in this district have routinely held that recognizing and enforcing a foreign plan and confirmation order falls within the scope of the relief available under section 1521 and section 1507 of the Bankruptcy Code. *See, e.g., U.S. Steel*, 571 B.R. at 609; *In re Cell C*, 571 B.R. at 551; *In re Rede Energia S.A.*, 515 B.R. 69 (Bankr. S.D.N.Y. 2014). In particular, this Court and others have enforced Hong Kong schemes of arrangement. *See, e.g., Kaisa*, No. 16-11303 (SHL) (Bankr. S.D.N.Y. 2016) (ECF No. 15); *see also In re Dingway*, No. 22-10648-BKC-LMI (Bankr. S.D. Fla. 2022) (ECF No. 14). In addition, this Court has also explained in detail why a United Kingdom scheme of arrangement and associated sanction order may properly be recognized and enforced in the United States. *See Avanti*, 582 B.R. at 619. As discussed above, the structure of United Kingdom schemes is very similar to that of Hong Kong schemes. *See* Counsel Decl., ¶¶ 10–11.

118. The need to extend comity to foreign proceedings is particularly salient with respect to proceedings such as the Hong Kong Proceeding that determine how property will be distributed in a collective proceeding because “[t]he equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding” to bind all creditors and comprehensively effectuate a plan of reorganization. *Atlas Shipping*, 404 B.R. at 737 (quoting

*Victrix S.S. Co. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713–14 (2d Cir. 1987)); *Gebhard*, 109 U.S. at 539 (“Unless all parties … can be bound by the arrangement … the scheme may fail .... Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized”); *Victrix S.S. Co.*, 825 F.2d at 714 (“The equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail”).

119. Comity is also particularly important in the insolvency context notwithstanding the fact that recognition of a foreign restructuring proceeding may implicate certain rights under U.S. law. For example, in *Telecom Arg.*, then-Second Circuit Judge Sotomayor affirmed a bankruptcy court’s order extending comity to Argentine insolvency proceedings, finding that those proceedings did not violate U.S. public policy considerations manifest in the Trust Indenture Act (“TIA”). *Telecom Arg.*, 528 F.3d at 165. The Second Circuit held that a bankruptcy court may grant enforcement of foreign insolvency proceedings that result in the restructuring of TIA-qualified notes so long as recognition of those proceedings is otherwise valid under then-section 304 of the Bankruptcy Code. Foreign insolvency proceedings can also modify payment terms under an indenture notwithstanding noteholders’ TIA rights. *See In re Bd. of Dirs. of Multicanal S.A.*, 307 B.R. 384 (Bankr. S.D.N.Y. 2004). Citing prior Supreme Court precedent, Judge Gropper rejected claims by noteholders:

[I]f foreign law can under certain circumstances trump the U.S. Constitution and preclude bondholders from enforcing their contractual rights, as *Gebhard* holds, there is no basis for adopting the principle espoused by [the noteholders], that foreign law can under no circumstances override § 316(b) of the Trust Indenture Act (except perhaps if the foreign law is identical in all respects to U.S. law). Nor can *Gebhard* be limited to the effect of a foreign proceeding on State rather than Federal rights. It is the seminal decision on granting comity to foreign insolvency proceedings.

*Id.* at 390.

120. In that regard, the Supreme Court has held that a foreign judgment should not be challenged in the United States if the foreign forum provides:

[A] full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it is sitting ....

*Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895); *see also Avanti*, 582 B.R. at 618–619 (extending comity to a sanctioned scheme that: complied with applicable statutory requirements; fairly represented creditors in classification; found the majority acted in a *bona fide* manner; was one that an intelligent and honest man, acting in respect of his interests as a creditor, might reasonably approve; and where jurisdiction was proper); *Metcalfe*, 421 B.R. at 698 (holding that a Canadian order approving a release and injunction was enforceable in Chapter 15 under principles of comity because “[t]he U.S. and Canada share the same common law traditions and fundamental principles of law. Canadian courts afford creditors a full and fair opportunity to be heard in a manner consistent with standards of U.S. due process. U.S. federal courts have repeatedly granted comity to Canadian proceedings.”); *In re Sino-Forest Corp.*, 501 B.R. 655, 663–64 (Bankr. S.D.N.Y. 2013) (“The same analysis [as *Metcalfe*], with the same conclusions, applies here.”).

121. The Hong Kong Proceeding easily meets the standard for extending comity. The facts and circumstances here are very similar to those in *Metcalfe* and *Sino-Forest*. In the Hong Kong Proceeding, the Scheme Creditors have a full and fair opportunity to vote on and be heard in connection with the Scheme in a manner consistent with U.S. standards of due process. *See* Counsel Decl., ¶ 35. For example, in addition to notice of and an opportunity to participate at

the Convening Hearing, in the Scheme Meeting, and the Sanction Hearing, the Scheme Creditors also received access to the Scheme and the Explanatory Statement, which is comparable to the disclosure statement required under section 1125 of the Bankruptcy Code for solicitation of votes on a chapter 11 plan insofar as it contains all information reasonably necessary to allow them to make an informed decision on the Scheme. *Id.*, ¶ 33. The Scheme, similar to United Kingdom schemes, requires a greater than fifty percent (50%) majority in number representing not less than seventy-five percent (75%) in value of the single class of Scheme Creditors present and voting, in person or by proxy, at the Scheme Meeting to vote in favor of the Scheme to be legally binding. *See id.*, ¶ 36; *see also Avanti*, 582 B.R. at 618–19 (recognizing a foreign scheme with the same voting requirements). Accordingly, enforcing the Scheme and Sanction Order as appropriate relief or additional assistance under section 1521 or 1507 is an appropriate exercise of comity.

**V. The Standard for Injunctive Relief Is Satisfied with Respect to Enforcement of the Scheme**

122. Pursuant to section 1521(e) of the Bankruptcy Code, the standard for injunctive relief under federal law applies in Chapter 15 cases. 11 U.S.C. § 1521(e). To obtain a permanent injunction, a movant must demonstrate that (i) an injunction is required to avoid irreparable harm and (ii) there is a likelihood of success on the merits. *See Clarkson v. Coughlin*, 898 F. Supp. 1019, 1035 (S.D.N.Y. 1995).

123. With respect to the second factor, the Foreign Representative seeks injunctive relief enforcing the Scheme and the Hong Kong Orders in the United States only upon recognition thereof as part of the Proposed Recognition Order. Therefore, at the time such discretionary relief is granted, the requirement that the movant succeeds on the merits will be satisfied.

124. With respect to the first factor, irreparable harm exists where the orderly and equitable determination of claims and distribution of a debtor's assets could be disrupted absent

injunctive relief. See, e.g., *Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713–14 (2d Cir. 1987) (“The equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail.”); *In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003); *In re MMG LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“The guiding principle of bankruptcy law is equality of distribution.... As a rule, therefore, irreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors.”); *In re Rubin*, 160 B.R. 269, 283 (Bankr. S.D.N.Y. 1993) (quoting *In re Lines*, 81 B.R. 267, 270 (Bankr. S.D.N.Y. 1988) (“[T]he premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury.”)).

125. As discussed above in the context of demonstrating that enforcement of the Scheme and the Restructuring contemplated thereby is appropriate, an injunction enforcing the terms of the Scheme and the Hong Kong Orders in the United States is necessary to prevent Scheme Creditors or other entities from seeking to obtain judgments in the United States against the Debtor or other parties who receive relief from the Scheme to obtain greater recoveries than those to which they are entitled under the Scheme. If the Scheme Creditors can effectively evade the terms of the Scheme and the Restructuring by commencing actions in the United States, parties involved in the Restructuring would be required to defend against any such proceedings and deplete the resources of the restructured business to the detriment of the Restructuring. For these reasons, allowing creditors to re-litigate issues resolved pursuant to the Scheme and Hong Kong Orders in the United States would threaten the success of the Restructuring and cause “irreparable harm” to the Debtor. The granting of the requested relief, conversely, would protect the interests of the Scheme

Creditors by maximizing the total value available for distribution and ensuring that claims are determined and paid on a consistent, nondiscriminatory basis in accordance with the terms of the Scheme and Hong Kong Orders.

126. Both prior to and since the enactment of Chapter 15, courts have readily granted permanent injunctive relief to enforce foreign restructuring plans and discharges, including releases for parties other than the petitioning debtor similar to the releases included in the Scheme.

*See, e.g., In re E-House (China) Enter. Holdings Ltd.*, No. 22-11326 (JPM) (Bankr. S.D.N.Y. Nov. 15, 2022) (ECF No. 22) (recognizing and enforcing a Cayman Islands scheme of arrangement that included releases including of parties other than the debtor); *Hidili*, No. 22-10736 (DSJ) (Bankr. S.D.N.Y. July 12, 2022) (recognizing and enforcing a Hong Kong scheme of arrangement that included third-party releases); *Modern Land*, 641 B.R. at 793 (permanently enjoining creditors involved in a Cayman Island scheme of arrangement “from asserting or seeking to enforce any debt, claim, or interest that is released, discharged, or modified by” the Cayman Island court and related scheme); *In re Rede Energia S.A.*, 515 B.R. 69, 93 (Bankr. S.D.N.Y. 2014) (“The request by the Foreign Representative that the Court . . . enjoin acts in the U.S. in contravention of the [foreign confirmation decision] is relief of a type that courts have previously granted under section 304 of the Bankruptcy Code and other applicable U.S. law.”) (citing *Telecom Arg.*, 528 F.3d at 174–76); *Sino-Forest Corp.*, 501 B.R. at 665 (granting permanent injunctive relief to enforce Canadian plan); *Metcalfe*, 421 B.R. at 685 (same).

127. Moreover, in relation to enforcing third-party releases in foreign schemes of arrangement, this Court noted that:

Third-party non-debtor releases are common in schemes sanctioned under UK law, particularly for releases of affiliate guarantees of the debt that is being adjusted by the scheme. *See In re T & N Ltd and others (No 4) [2006] EWHC 1447 (Ch)* (David Richards , J.) (holding that a scheme did not necessarily prohibit the alteration of

third-party claims against insurers); *Re Lehman Brothers International (Europe) (In administration) (No 2) [2009] EWCA Civ 1161* (following *T & N*, Patten LJ held (at paragraph 63) that it was “entirely logical to regard the court’s jurisdiction as extending to approving a scheme which varies or releases creditors’ claims against the company on terms which require them to bring into account and release rights of action against third-parties designed to recover the same loss. The release of such third-party claims is merely ancillary to the arrangement between the company and its own creditors.”); *In Re La Seda de Barcelona SA [2010] EWHC 1364 (Ch)* (Proudman J applied *T & N* and *Lehman*, and concluded that a third-party subsidiary guarantor could be released pursuant to a deed of release executed on behalf of scheme creditors).

*In re Avanti Commc ’ns*, 582 B.R. at 618. This Court went on to conclude that:

schemes of arrangements sanctioned under UK law that provide third-party non-debtor guarantor releases should be recognized and enforced under chapter 15 of the Bankruptcy Code. [The creditors] had a full and fair opportunity to vote on, and be heard in connection with, the [s]cheme. . . . The proceedings under UK law in the UK courts afford creditors a full and fair opportunity to be heard in a manner consistent with US due process standards. . . .

The failure of a US bankruptcy court to enforce the [third-party releases] could result in prejudicial treatment of creditors to the detriment of the [d]ebtor’s reorganization efforts and prevent the fair and efficient administration of the [r]estructuring. Principles of comity permit a US bankruptcy court to recognize and enforce the [s]cheme.

*Id.* at 618-619 (internal citations omitted). This Court later reiterated its view in *In re Agrokor D.D.* that foreign restructuring plans that include third-party releases are entitled to comity if creditors had a full and fair opportunity to vote and be heard. *See* 591 B.R. 163, 189-190 (Bankr. S.D.N.Y. 2018). This Court further noted in a recent hearing that “[p]rinciples of enforcement of foreign judgments in comity in Chapter 15 cases strongly counsel approval of enforcement in the United States of third-party, non-debtor release and injunction provisions even if those provisions could not be entered in a plenary Chapter 11 case.” *In re Huachen Energy, Ltd.*, Case No. 22-10005 (LGB) (ECF No. 20) Hr’g Tr. 19:13-17 (Bankr. S.D.N.Y. Feb 3, 2022).

128. Additionally, the injunctive relief sought herein, including the enforcement of the Scheme releases, would not cause undue hardship or prejudice to the rights of any creditor based

in the United States. In fact, the procedures for participating in and voting on the Scheme under Hong Kong law are applied uniformly to all of the Debtor's creditors, wherever they reside. Moreover, the panoply of rights of Scheme Creditors to participate in and object to the Scheme in regular proceedings before the Hong Kong Court are discussed above with respect to the recognition of the Scheme. In short, the injunctive relief sought herein seeks only to give effect to the orderly and equitable implementation of the Scheme and the Hong Kong Orders in the United States.

## **VI. The Relief Requested Is Consistent with United States Public Policy and Policy Behind the Bankruptcy Code**

129. The purpose of Chapter 15 is set forth in section 1501 of the Bankruptcy Code and includes:

(1) cooperation between (a) courts of the United States, the United States Trustee, trustees, examiners, debtors, and debtors in possession; and (b) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (2) greater legal certainty for trade and investment; (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor; (4) protection and maximization of the value of the debtor's assets; and (5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

11 U.S.C. § 1501. Recognizing the Hong Kong Proceeding as a foreign main proceeding comports with all of these objectives.

130. While section 1506 of the Bankruptcy Code provides that nothing in Chapter 15 shall prevent the Court from refusing to take an action otherwise required therein if such action would be manifestly contrary to the public policy of the United States, the public policy exception is narrowly construed. *See, e.g., Sino-Forest*, 501 B.R. at 665; *Metcalfe*, 421 B.R. at 697; *In re Vitro*, 701 F.3d at 1069. Moreover, the public policy exception must be viewed in light of one of the fundamental goals of the Bankruptcy Code—the centralization of

disputes involving the debtor. *See, e.g., In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 989 (2d Cir. 1990) (“The Bankruptcy Code provides for centralized jurisdiction and administration of the debtor, its estate and its reorganization in the Bankruptcy Court . . . .”) (internal citations and quotation marks omitted). Indeed, as some courts have noted:

American courts have long recognized the need to extend comity to foreign bankruptcy proceedings because the equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail.

*Atlas Shipping*, 404 B.R. at 733 (internal quotation marks omitted) (citing *Victrix*, 825 F.2d at 713–14); *see also JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 424 (2d Cir. 2005) (“We have repeatedly held that U.S. courts should ordinarily decline to adjudicate creditor claims that are the subject of a foreign bankruptcy proceeding.”).

131. Recognition of the Hong Kong Proceeding as a foreign main proceeding will enable the Debtor to fully implement the Restructuring as intended pursuant to the Scheme, facilitate a meaningful distribution for its creditors, and enable the business of the Group to continue as reconstituted.

132. Recognition of the Hong Kong Proceeding also would promote the fair and efficient administration of a cross-border reorganization procedure that protects the interests of all stakeholders and interested parties. By recognizing the Hong Kong Proceeding and granting the relief requested, the process of resolving any residual claims against the Debtor would be centralized in Hong Kong, which is a fundamental goal of the Bankruptcy Code. *See, e.g., Ionosphere*, 922 F.2d at 989; *Cornfeld v. Investors Overseas Servs., Ltd.*, 471 F. Supp. 1255, 1259 (S.D.N.Y. 1979) (noting that “the firm policy of American courts is the staying of actions against a corporation which is the subject of a bankruptcy proceeding in another jurisdiction”). Claims would be treated in accordance with the Scheme that comports with Hong Kong law, which is

similar to comparable United States laws, and any disputes would be subject to the uniform jurisdiction of one tribunal—the Hong Kong Court. Recognition will enable the orderly administration of the Debtor’s assets and foster cooperation between courts in Hong Kong and the United States. Such orderly administration is demonstrably consistent with the public policy of the United States and the Bankruptcy Code. If the Scheme sanctioned by the Hong Kong Court is not enforced in the United States, the uniform and orderly administration of the Debtor in the Hong Kong Proceeding would be jeopardized. *See, e.g., Gebhard*, 109 U.S. at 539 (1883) (“[u]nless all parties in interest, wherever they reside, can be bound by the arrangement which is sought to have legalized, the scheme will fail. All home creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries.”).

133. If the Court does not recognize the Scheme, then the Hong Kong Proceeding faces legal uncertainty and the Scheme, and therefore the Restructuring, may not succeed. Additionally, failure to enjoin the Scheme Creditors or enforce the relief provided for in the Scheme in the United States may result in unnecessary enforcement costs or the piecemeal disposition of assets to the detriment of the Debtor and its various stakeholders. The purpose of Chapter 15 is to prevent such harms. *See* 11 U.S.C. § 1501(a) (noting that, among other objectives described herein, Chapter 15 facilitates “the rescue of financially troubled business” and provides for the “fair and efficient administration of cross border insolvencies”).

134. Avoiding such potential adverse outcomes through the formal recognition of the Hong Kong Proceeding and enforcement of the Scheme and the Hong Kong Orders in the United States effectuates the principal objectives Congress articulated when it enacted Chapter 15 of the Bankruptcy Code and otherwise comports with U.S. public policy.

**NOTICE**

135. In accordance with Bankruptcy Rule 2002(q), the Foreign Representative will provide notice of this Motion to (i) the Debtor; (ii) the Office of the United States Trustee for Region 2; and (iii) the parties entitled to notice set forth in the *Motion Pursuant to Fed. R. Bankr. 2002 and 9007 for Order (I) Scheduling Recognition Hearing (II) Setting Objection Deadline, and (III) Approving Form and Manner of Service of Notice*, filed contemporaneously herewith. The Foreign Representative submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

**NO PRIOR REQUEST**

136. No previous request for the relief sought herein has been made by the Foreign Representative to this or any other court.

*[Remainder of page intentionally left blank.]*

WHEREFORE the Foreign Representative respectfully requests entry of the Proposed Recognition Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: September 19, 2023  
New York, New York

**SIDLEY AUSTIN LLP**

*/s/ Anthony Grossi*

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*Counsel to the Foreign Representative*  
*\*Admitted only in Texas*

**Exhibit A**

**Proposed Recognition Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

Sunac China Holdings Limited,<sup>1</sup>

Debtor in Foreign Proceeding.

Chapter 15

Case No. 23-11505 ( )

**ORDER GRANTING (I) RECOGNITION OF FOREIGN MAIN  
PROCEEDING, (II) RECOGNITION OF THE FOREIGN REPRESENTATIVE,  
AND (III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

Upon the motion (the “Motion”)<sup>2</sup> of Mr. Gao Xi, in his capacity as the authorized foreign representative (the “Foreign Representative” or “Petitioner”) for the above-captioned debtor (the “Debtor”) that is subject to a restructuring proceeding entitled *In the Matter of Sunac China Holdings Limited* (the “Hong Kong Proceeding”), concerning a scheme of arrangement (the “Scheme”) between the Debtor and Scheme Creditors currently pending before the Court of First Instance of the High Court of the Hong Kong Special Administrative Region of the People’s Republic of China (the “Hong Kong Court”), case number HCMP382/2023, pursuant to sections 105(a), 1504, 1507, 1509, 1510, 1515, 1517, 1520, 1521 and 1522 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), for entry of an order (this “Order”), among other things: (i) finding that the Debtor is eligible to be a “debtor” under chapter 15 of the Bankruptcy Code; (ii) recognizing the Hong Kong Proceeding as a “foreign main proceeding;” under section 1517 of the Bankruptcy Code and granting all relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code; (iii) recognizing the Petitioner as a duly

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<sup>1</sup> The Debtor is incorporated in the Cayman Islands as an exempted company with limited liability and registered with registration number 186588. The Debtor’s principal place of business in Hong Kong is Room 1517, Level 15, West Exchange Tower, 322 Des Voeux Road Central, Sheung Wan, Hong Kong.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

appointed “foreign representative,” as defined in section 101(24) of the Bankruptcy Code in respect of the Hong Kong Proceeding; (iv) granting full force and effect and comity to the Scheme and the Hong Kong Orders, including the releases and discharge(s) contained therein and the additional relief set forth herein pursuant to section 1521(a) and/or 1507(a) of the Bankruptcy Code, including granting the Foreign Representative the right to administer the Debtor’s assets; (v) permanently enjoining all parties from commencing or continuing any action or proceeding that is inconsistent with the Scheme in the United States; (vi) entrusting Petitioner with the administration of any and all of the Debtor’s assets within the territorial jurisdiction of the United States; (vii) authorizing the Existing Notes Trustee, Existing Notes Agents, Existing Agents, and New Trustees to take any and all actions necessary to give effect to the terms of the Restructuring and discharge(s); and (viii) granting such other and further relief as this Court deems just and proper; and upon this Court’s review and consideration of the Chapter 15 Petition, the Foreign Representative Declaration and the Counsel Declaration, each filed contemporaneously herewith, all other pleadings filed by or on behalf of the Foreign Representative in support of the Chapter 15 Petition, and the evidence admitted at the hearing (the “Hearing”) to consider the Chapter 15 Petition; and due and proper notice of the Chapter 15 Petition having been provided; and no other or further notice being necessary or required; and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved; and all interested parties having had an opportunity to be heard at the Hearing; and after due deliberation and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS AND CONCLUDES THAT:**

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 of the Federal Rules of Bankruptcy

Procedure (the “Bankruptcy Rules”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, section 1501 of the Bankruptcy Code, and the *Amended Standing Order of Reference* dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11*, 12 Misc. 00032 (S.D.N.Y. Feb. 2, 2012) (Preska, C.J.).

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P) and this Court may enter a final order consistent with Article III of the United States Constitution.

D. Venue is proper in this district pursuant to 28 U.S.C. § 1410.

E. The Debtor has intangible property and property rights within this district and, therefore, the Debtor is eligible to be a debtor in a Chapter 15 case pursuant to sections 109 and 1501 of the Bankruptcy Code.

F. This case was properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

G. The Chapter 15 Petition meets the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rules 1007(a)(4) and 2002.

H. The Hong Kong Proceeding is a “foreign proceeding” within the meaning of section 101(23) of the Bankruptcy Code.

I. The Hong Kong Proceeding is located in Hong Kong, which is the country where the Debtor’s center of main interests is located and, as such, the Hong Kong Proceeding is entitled

to recognition as a “foreign main proceeding” pursuant to sections 1502(4) and 1517(b)(1) of the Bankruptcy Code.

J. The Scheme was sanctioned by the Sanction Order of the Hong Kong Court dated [●], 2023.

K. The Hong Kong Proceeding is entitled to recognition by this Court pursuant to sections 1515 and 1517(a) of the Bankruptcy Code and is entitled to all relief afforded to a foreign main proceeding under section 1520 of the Bankruptcy Code.

L. The Foreign Representative is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of the Debtor within the meaning of section 101(24) of the Bankruptcy Code.

M. The relief granted hereby is warranted pursuant to sections 105(a), 1507(a), 1509(b)(2)-(3), 1515, 1517, 1520, 1521(a) and 1525(a) of the Bankruptcy Code, is necessary and appropriate to effectuate the purposes of Chapter 15, to protect the Debtor and the interests of its creditors and other parties in interest, and is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code. The relief granted hereby will not cause hardship to the creditors of the Debtor or other parties in interest that is not outweighed by the benefits of granting that relief.

N. The Debtor is eligible in the exercise of the Court’s discretion for all of the relief and additional assistance set forth herein under sections 1507 and 1521(a) of the Bankruptcy Code.

O. Absent the relief granted herein, the Debtor may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative, or regulatory actions or proceedings in connection with the claims against them or their property that are subject to the Hong Kong Proceeding, thereby interfering with and causing harm to, the Debtor, its creditors and other parties

in interest in the Hong Kong Proceeding and, as a result, the Debtor, its creditors and such other parties in interest would suffer irreparable injury for which there is no adequate remedy at law, a result contrary to the purposes of Chapter 15.

P. The injunctions contained here (i) are within the Court's jurisdiction, (ii) are essential to the success and objectives of the Hong Kong Proceeding and the Scheme, and (iii) confer material benefits on, and is in the best interests of, the Group and the Scheme Creditors.

Q. Appropriate notice of the filing of, and the hearing on, the Chapter 15 Petition was given, which notice was deemed adequate for all purposes, and no further notice need be given.

R. In accordance with section 1507(b) of the Bankruptcy Code, the relief granted herein will reasonably assure: (i) the just treatment of all holders of claims against or interests in the Debtor's property; (ii) the protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the Hong Kong Proceeding; (iii) the prevention of preferential or fraudulent dispositions of property of the Debtor; and (iv) the distribution of proceeds from the Debtor's property substantially in accordance with the order prescribed in the Bankruptcy Code.

S. All creditors and other parties in interest, including the Debtor, are sufficiently protected in the grant of the relief ordered hereby in compliance with section 1522(a) of the Bankruptcy Code.

**NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion and requested relief therein is granted.
2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the Hearing, or by stipulation

filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.

3. The Hong Kong Proceeding is granted recognition as a foreign main proceeding as defined in section 101(23) of the Bankruptcy Code and pursuant to section 1517 of the Bankruptcy Code.

4. The Foreign Representative is the duly appointed and authorized representative of the Hong Kong Proceeding within the meaning of section 101(24) of the Bankruptcy Code, is authorized to act on behalf of the Debtor in this Chapter 15 Case and is established as the exclusive representative of the Debtor in the United States.

5. The Petitioner is entrusted with the administration of any and all of the Debtor's assets within the territorial jurisdiction of the United States, including prosecution of any causes of action belonging to the Debtor.

6. The Hong Kong Proceeding, the Scheme, and the Hong Kong Orders, including the Restructuring and releases contained therein, are recognized, granted comity, and entitled to full force and effect in the United States against all entities (as that term is defined in section 101(15) of the Bankruptcy Code) in accordance with their terms, and such and such terms shall be binding and fully enforceable on the Scheme Creditors, as well as their respective heirs, successors, assigns, trustees, subsidiaries, affiliates, officers, directors, agents, employees, representatives, attorneys, beneficiaries, guardians and similar officers, or any persons claiming through or in the right of any such persons or entities (collectively, the "Related Parties") whether or not they actually agreed to be bound by the Hong Kong Scheme or participated in the Hong Kong Scheme.

7. All Scheme Creditors and Related Parties are permanently enjoined and restrained from taking any actions in the United States inconsistent with the Scheme or the Hong Kong

Orders, or interfering with the enforcement and implementation of the Scheme or the Hong Kong Orders.

8. All Scheme Creditors and Related Parties are permanently enjoined and restrained from asserting or seeking to enforce any debt, claim, or interest that is released, discharged, or modified by the Hong Kong Orders, the Scheme, and this Order, including, without limitation, with respect to any such debt, claim or interest:

- (i) executing against any of the Debtor's assets;
- (ii) commencing or continuing, in any manner, directly or indirectly (including by way of counterclaim), any action, suit, or other proceeding (including, without limitation, arbitration, mediation, or any judicial, quasi-judicial or administrative action, proceeding, or process in any judicial, arbitral, administrative or other forum) or employing processes to recover such debt, claim, or interest against the Debtor, any other Released Person, their property, any direct or indirect transferee of or successor to such property, or any property of such transferee or successor, which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtor's estate in the Hong Kong Proceeding, Hong Kong law or the implementation or consummation of the Hong Kong Orders or the Scheme (including releases contained therein);
- (iii) taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff, or other claim against the Debtor, any other Released Person, or any of their property or proceeds thereof, which in each case is in any way inconsistent with, relates to, or would interfere with the administration of the Debtor's estate in the Hong Kong Proceeding, Hong Kong law, or the implementation or consummation of the Hong Kong Orders or the Scheme (including the releases contained therein);
- (iv) transferring, relinquishing or disposing of any property of the Debtor to any entity other than the Foreign Representative and his authorized representatives and agents or taking or continuing any act to obtain possession of, commingle, or exercise control over, such property, which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtor's estate in the Hong Kong Proceeding, Hong Kong law or the implementation or consummation of the Hong Kong Orders or the Scheme (including the releases contained therein);
- (v) commencing or continuing in any manner, directly or indirectly, an action or proceeding concerning the Debtor's assets, rights, obligations or liabilities, or to resolve any dispute arising out of any provision of the Scheme (including the releases contained therein); and

(vi) declaring or considering the filing of the Hong Kong Proceeding, the Scheme, the Sanction Order, or this Chapter 15 Case a default or event of default under any agreement, contract or arrangement;

*provided*, such injunction applies solely within the territorial jurisdiction of the United States and only to the extent that commencing or continuing such action or employing such process is inconsistent with the Hong Kong Scheme and/or applicable law; *provided, further*, that nothing herein shall prevent any entity from (a) filing claims against the Debtor in the Hong Kong Scheme, (b) seeking relief from the Hong Kong court in the Hong Kong Proceeding or this Court in this Chapter 15 Case, as applicable, from the injunctions contained in this Order or (c) seeking relief from this Court to enforce this Order.

9. For the avoidance of doubt, all debt that is discharged pursuant to the Scheme, the Hong Kong Orders, or this Order, including any debt governed by New York state law, is hereby discharged as a matter of federal and New York state law.

10. As of the Restructuring Effective Date, any judgment, wherever and whenever obtained, to the extent such judgment is a determination of the liability of the Debtor or any other parties who receive relief from the Scheme, including with respect to any debt cancelled, discharged, or restructured under the Scheme, or as a result of Hong Kong law relating to the Scheme, is unenforceable in the United States, in each case, to the extent inconsistent with the Scheme, the Sanction Order, or such law.

11. The Foreign Representative, the Debtor, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules or orders of this Court.

12. No action taken by the Foreign Representative, the Debtor, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for,

implementing, or otherwise acting in furtherance of or in connection with the Hong Kong Proceeding, this Order, this Chapter 15 Case, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under 306 and 1510 of the Bankruptcy Code.

13. This Order shall be served by electronic mail to the extent email addresses are available and otherwise by U.S. mail, first-class postage prepaid or overnight, upon: (i) the Chapter 15 Notice Parties (as defined in the *Motion Pursuant to Fed. R. of Bankr. P. 2002 and 9007 Requesting Entry of an Order (I) Scheduling the Recognition Hearing and (II) Approving the Form and Manner of Service of Notice* (ECF No. [●])) (the “Scheduling Motion”)) and (ii) those parties requesting notice pursuant to Bankruptcy Rule 2002. Kroll Restructuring Administration LLC, in its capacity as the Debtor’s noticing agent, shall serve this Order in the manner described in the Scheduling Motion. Such service and notice is good and sufficient service and adequate notice for all purposes.

14. The Foreign Representative and the Debtor are authorized and empowered to, and may in their discretion and without further delay, (i) execute and deliver documents to effectuate the Scheme (including any releases) and take any action and perform any act necessary to implement and effectuate the terms of this Order, the Sanction Order, and the Scheme and (ii) exercise all consent and approval rights provided for in the Scheme in the manner set forth in the Scheme to take all actions necessary to carry out this Order.

15. Each of the Existing Notes Trustee, Existing Notes Agents, New Trustees, Existing Agents, and New Agents is hereby authorized to take any actions or execute any documents it believes appropriate in furtherance of or in connection with consummating the transactions contemplated by the Hong Kong Orders and the Scheme, including, among other things, the

cancellation and discharge of the Existing Debt and the Existing Finance Documents. For the avoidance of doubt, all Scheme Creditors and Related Parties are permanently enjoined and restrained from taking any actions in the United States against the Existing Notes Trustee and Existing Agents in connection with the cancellation and discharge of applicable Existing Debt and applicable Existing Finance Documents.

16. The Debtor is authorized to reimburse the Ad Hoc Group, Existing Notes Trustees, Existing Notes Agents, and/or Existing Agents for all reasonable fees, costs and expenses, including reasonable fees and expenses of their respective counsel, that each incurs in taking such actions, in accordance with the terms of the Scheme upon the Restructuring Effective Date, as applicable.

17. No party shall incur any liability for following the terms of this Order (whether by acting or refraining from acting), except in the case of the party's own gross negligence or willful misconduct.

18. Nothing herein shall enjoin, impair, or otherwise supplement or modify in any manner the right of any party granted under the Scheme, and nothing herein shall modify the exclusive right of the Hong Kong Court to hear and determine any suit, action, or proceeding and to settle any dispute which may arise out of the Explanatory Statement or any provision of the Scheme or Hong Kong Orders, or out of any action to be taken or omitted to be taken under the Scheme or Hong Kong Orders or in connection with the administration of the Scheme or Hong Kong Orders.

19. Notwithstanding any provision in the Bankruptcy Code or the Bankruptcy Rules to the contrary, including, but not limited to Bankruptcy Rules 1018, 3020(e), 6004(h), 7062 and 9014, (i) this Order shall be effective immediately and enforceable upon its entry, (ii) the Foreign

Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order and (iii) this Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

20. This Court shall retain jurisdiction to hear and determine all matters arising from or related to interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2023  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE